

No. 11638

United States
Circuit Court of Appeals
For the Ninth Circuit

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND
ALLIED WORKERS OF AMERICA, JEFF KIBRE,
GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R.
SMITH, GEORGE KNOWLTON, OTIS W. SAWYER,
W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR
D. HILL, C. LLOYD MUNSON, CHARLES McLAUCH-
LAN, ROBERT M. PHELPS, BURT D. LACKYARD,
and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Six Volumes
VOLUME II
Pages 463 to 942

Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division

FILED
DEC 11 1947

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(Testimony of Joseph Stagnaro.)

Q. And with whom did you have such conversation?
A. I talked to Zafranovich.

Q. And by Zanfranovich, whom do you mean?

A. Zafran.

Q. Do you see him in the court room?

A. Over there (indicating).

Mr. Andersen: Zafran is a contraction of Zafranovich, your Honor.

Mr. Rubin: May the record show that the witness is indicating Mr. Zafran.

Q. (By Mr. Rubin): And who else did you see there, if you recall, Mr. Stagnaro

A. Mr. Knowlton.

Q. Is he in the court room?

A. Right there (indicating), yes.

Mr. Rubin: Let the record show Mr. Knowlton has been indicated.

Q. (By Mr. Rubin): Anyone else?

A. Mr. Smith.

Q. The gentleman to my left? A. Yes.

Mr. Rubin: May the record indicate that Mr. Smith has been pointed out by the witness.

Q. (By Mr. Rubin): Anyone else?

A. I seen some others, but I don't remember who the other fellows were. I am not very much acquainted with them. [863]

Q. Now, did anyone go to the union office with you, Mr. Stagnaro?

A. Yes.

Q. Who was that?

A. It was a fellow the Flyer.

(Testimony of Joseph Stagnaro.)

Q. What was his name?

Q. What was his name? A. Castagnola.

Q. Do you know his first name?

A. Nello.

Q. Nello Castagnola? A. That is right.

Q. Who else, if anyone?

A. Philip Gulyermo.

Q. Anyone else?

A. Another fellow off the boat Vinmark.

Q. Do you know his name?

A. I don't know his last name. His name is Vincent.

Q. There are a lot of Vincents there in San Pedro, aren't there?

A. His last name is Babiko.

Q. Do you know how to spell that?

A. No, I don't.

Q. Did you have a conversation with the men that you found at the union hall?

A. Yes [864]

Q. What was that conversation, Mr. Stagnaro, and please state to the court and jury as best you recall the substance of what each of the persons said, if you can identify them specifically, in other words, who said what?

A. Well, I asked Zafran if the boats were going out, and he said yes, the boats are going out.

We asked them if we could go out, and we don't want to do anything towards the union, you know,

(Testimony of Joseph Stagnaro.)

we want to go out fishing, if there is any possible chance of us guys going out that we won't, you know, get out of line, we would like to follow what they do.

So Zafran said that they had a committee and that the committee would see us. So we want to see the committee.

Q. Where was the committee meeting?

A. The committee was in the back.

Q. Did you recognize any of the persons on the committee?

A. Mr. Knowlton and Mr. Smith.

Q. Did all of you go back to the committee at that time?

A. Yes, we did.

Q. What was said when you all went to visit the committee?

A. Well, the committee told us that the boats was going out and if we stepped outside they would take a vote [865] on us if we could go out.

Q. Then what happened?

A. So we stepped outside for about five minutes. They called us in and said it was okay, they would give us a clearance card to go fishing at Newport.

Q. All right. When they gave you the clearance card, did they give you a card, a clearance card, at that time?

A. No, not right then.

Q. Did they tell you anything else other than we will give you a clearance card?

(Testimony of Joseph Stagnaro.)

A. Well, they said if we didn't bring the fish to the San Pedro dealers and a couple of markets down there in Newport, that we could bring the fish to Newport and Santa Monica and Redondo.

Q. But not to San Pedro or to a couple at Newport?

A. That is correct.

Q. What else did they tell you?

A. The clearance cards are good for five days.

Q. After the five days, what did you have to do?

A. Come back and do a little picket duty.

Q. Did they tell you for how many days you had to do picket duty or how long you had to do picket duty?

A. For six hours, I think.

Q. Did you go out fishing after you received that clearance card? [866]

A. Yes, we did.

Q. For how many days did you go out fishing?

A. I think five days.

Q. Then did you return?

A. Yes, we did.

Q. Then did you do picket duty?

A. Yes, I picketed twice.

Q. You picketed twice? A. Yes.

Q. What did your picketing consist of, Mr. Stagnaro?

A. I went down at night time, about six o'clock at night, until 12:00 o'clock.

Q. You went down where?

A. Down to the fish market.

(Testimony of Joseph Stagnaro.)

Q. What did you do when you went down there?

A. I sat in a car.

Q. That was your picket duty, is that right?

A. That is right.

Q. Did anybody come around and check up on you as to whether or not you were walking your beat?

A. Not that I remember.

Q. What did you do the next day?

A. The next day I think we put the nets on board, or we had them on board and left again.

Q. After performing your picket duty in the manner in [687] which you described, did they punch your card? A. Yes.

Q. Who punched the card, if you recall?

* * *

A. Tommy Sawyer.

Q. Do you see him in the court room?

A. I see him when I come in. There he is.

Mr. Rubin: Let the record show that the defendant Otis W. Sawyer, otherwise known as Tommy Sawyer, has been indicated.

Q. Where was Mr. Sawyer at the time your card was punched?

A. He was down there on the dock there.

Q. On the San Pedro Fish Wharf?

A. Yes.

Q. And did you go out fishing after he punched your card?

A. We went out that afternoon.

(Testimony of Joseph Stagnaro.)

Q. Did you deliver any fish to any of the San Pedro dealers during that period?

A. No, sir.

Q. Did you deliver any fish to the dealers in Newport [868] who were mentioned as not delivering any fish to during that period?

A. No, sir.

Q. I show you what has been marked as Government's Exhibit No. 8 for identification and ask you if you have ever seen that document before.

A. That is my clearance card.

* * *

At this time the government offers Government's Exhibit 8 for identification into evidence.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 8).

Q. (By Mr. Rubin): I call your attention to Government's Exhibit No. 8 and specifically to the three punch marks and ask you if [869] your card was punched three times.

A. It is marked three times.

Q. Now did you picket three times?

A. No, one time I paid for one because I could not make it down there.

Q. Who asked you for money instead of picketing?

A. I don't remember.

(Testimony of Joseph Stagnaro.)

Q. To whom did you pay the money?

A. I paid it to somebody in the office there. I don't remember who he was.

Q. In what office?

A. In the union office.

* * *

Q. The time that you couldn't picket, did you have a conversation with someone at the union office with respect to your not being able to picket?

A. Yes.

Q. What office was that conversation had at?

A. In the office of the local there.

Q. Do you remember with whom you had this conversation?

A. No. The man I paid I don't remember who I paid.

Q. What did you tell the man when you went there?

A. I told him if we could go out, you know, I didn't want to picket, that some of the boys were paying and I would like to pay and not go on picket.

Q. What did he say?

A. He said all right.

Q. So what did you do?

A. I paid him.

Q. How much did you pay him?

A. \$4.00.

Q. And after you paid him the \$4.00 did he then punch your clearance card?

A. I don't know if he punched it or the other man punched it. That is a long time ago, you know.

(Testimony of Joseph Stagnaro.)

Q. Now in the ordinary course of your fishing operations, would you fish during the entire month of June?

A. Yes.

Q. During June of 1946 you commenced to fish approximately what date?

A. Seven or eight days after the 1st.

Q. Did you have your gear and equipment prior to that time?

A. I had it on the beach; yes.

* * *

Q. —why did you not fish between the 1st and the 8th of June, 1946?

* * *

The Witness: I didn't want to go out there during the strike.

* * *

Q. Just state to the court and jury, Mr. Stagnaro, why you did not go out fishing between the 1st and 8th of June, 1946?

A. I don't want to go out during a strike. You get into lots of trouble or something like that.

Mr. Andersen: I move that the last be stricken may it please the court.

Mr. Rubin: We will develop it. We submit, if your Honor please, that the witness has a right to testify as to what his state of mind is.

The Court: The previous question, the objection to it was overruled on the ground that it was incompetent. His answer indicated his state of mind and you have a right to ask him. The motion is denied.

(Testimony of Joseph Stagnaro.)

Q. (By Mr. Rubin): What did you mean by getting into a lot of trouble there, Mr. Stagnaro?

A. You never can tell during a strike?

* * *

Q. Do you remember the name of the market at Newport Beach which the union people told you not to sell fish at?

A. They told me we could sell fish at the Western Cannery or the Co-op down there.

Q. Do you know the name of the market where you were not supposed to sell fish?

A. Yes, Horman's and Bayside.

Q. Do you know who operates the Bayside Market?

A. I never did sell no fish to them, but I know who operates it. [874]

Q. Were any of the members of your crew members of Local 36?

A. Not then.

Q. During this period? A. No.

The Court: Who was your crew?

* * *

The Witness: The Castagnola boys was on it before and after. After that I had the kid with me and a brother-in-law of mine, that is all. There was three of us. There was four at first.

Q. (By Mr. Rubin): Mr. Stagnaro, you say you have been fishing in the Southern California waters for many years?

A. I have been fishing practically all of my life.

The Court: Here?

The Witness: In Southern California; yes.

(Testimony of Joseph Stagnaro.)

Q. (By Mr. Rubin): And when you fish for fish, the species of which are delivered to the fresh fish market, how far offshore do you have occasion to go?

A. Well, it depends. Sometimes the fish might be out eight or 10 miles, sometimes they may be in within a mile of the beach, sometimes closer than that. [875]

* * *

Q. Approximately what is the value of your boat, Mr. Stagnaro, together with the rigging or net?

A. \$5000 to \$6000.

* * *

Q. Mr. Stagnaro, during the year 1946 were you ever employed by the fish dealers in the San Pedro fresh fish wharf?

A. What do you mean "employed?" [876]

Q. Did you ever work for them?

A. I worked for them all the time, different markets, selling fish to different markets.

Q. When you say you worked for them, do you mean you worked for them in what capacity?

A. We catch the fish and sell them the fish?

Q. So that your working for them consists of selling them the fish, is that correct?

A. That is right?

Q. Did you ever work for them on a salary?

A. No, sir.

Q. Do the fresh fish markets at San Pedro have a right to tell you where to go and what types of fish to catch and when to catch them?

A. Not me anyway.

(Testimony of Joseph Stagnaro.)

Mr. Rubin: That is all, your Honor.

* * *

Cross-Examination

By Mr. Kenny:

Q. Mr. Stagnaro, you are not a member of the union but you are a member of the Small Boat Owners Association, aren't [877] you?

A. That is right.

Q. And your relationship with the union members have been very friendly all during the years?

Mr. Schwartz: Was that question answered?

The Court: He nodded his head vertically which ordinarily is taken to be an affirmative response.

Q. (By Mr. Kenny): When you didn't go fishing those first six days in June, in addition to the fact of there being a strike on you had other reasons for not going fishing, didn't you? Do you remember the weather and the state of the moon, and where fish would be available or suitable at that time?

A. No, the moon hadn't got anything to do when we are fishing barracuda. The more moon the better.

Q. What about the weather during that time?

A. The weather?

Q. Did you know where the fish were running during those first six days?

A. When we knocked off we were catching lots of fish.

Q. By the way, the name Stagnaro, are you related to the fish dealer Stagnaro in Santa Cruz?

A. No, sir.

(Testimony of Joseph Stagnaro.)

Q. Have you any relatives by marriage or blood who are fish dealers. [878]

A. No, sir.

Q. This time that you were picketing at night, you were picketing at night by—you were also working on your nets, weren't you? Wasn't there an arrangement so that you could be tending your nets that night?

A. That is right.

Q. And you delivered in your lifetime out in the channel here fish into the port many times, haven't you?

A. Yes, sir.

Q. Whenever the barracuda are running off Newport you deliver them in there, isn't that right?

A. That is right.

Mr. Kenny: That is all.

* * *

The Court: Call the jury down.

(The jury returned to the courtroom at 11:00 o'clock a. m.).

The Court: Usual stipulation?

Mr. Margolis: Yes, your Honor.

Mr. Garrett: Yes, your Honor.

Mr. Dixon: Yes, your Honor.

The Court: You have a motion to make on behalf of certain defendants, Mr. Margolis?

Mr. Margolis: Your Honor please, I understand from the Government that there will be no question with regard to the identification of the follow-

ing named defendants for the next couple of days at least, maybe longer: McComas, McKittrick, Hill, Munson, McLauchlan, Morkowski, Lackyard, Phelps.

We have made arrangements with each of these defendants, in the event that they are excused by the Court, to be contacted each night so that they are notified one day, that is, one evening, that they should be in court the next morning so that they can be in court the following morning.

On that basis we understand that any time we are told one day that they are wanted the next day they will be produced.

We ask that the defendants named be excused from attendance [882] at the trial in order that they may work, go fishing.

The Court: They are actually engaged in fishing?

Mr. Margolis: That is right.

Mr. Dixon: We have no objection to the motion, your Honor.

The Court: Very well. Mr. McComas, Mr. McKittrick, Mr. Hill, Mr. Munson, Mr. McLauchlan, Mr. Morkowski, Mr. Lackyard and Mr. Phelps.

Mr. Margolis: May I correct one thing? Mr. McKittrick will stay. He is not engaged in fishing. The others are.

The Court: Mr. McKittrick will stay?

Mr. Margolis: Yes.

The Court: You do not make the motion on behalf of him?

Mr. Margolis: No.

The Court: Mr. Morkowski I understand is engaged in an airplane plant in San Diego.

Mr. Margolis: That's right.

The Court: Each of you have heard the motion made by your counsel that you be excused temporarily in order that you may resume your occupation of fishing and that you will abide the order of the Court to return when needed. Do each of you understand the motion? (Assent).

Is there anyone who does not understand it? (No response).

Is that agreeable to each of you? (Assent). [883]

Very well. The order of the Court will be that the motion to excuse Mr. McComas, Mr. Hill, Mr. Munson, Mr. McLauchlan, Mr. Morkowski, Mr. Lackyard and Mr. Phelps from attendance upon the trial from day to day is granted until the further order of the Court. Each of you, however, are ordered and directed to keep in touch with your counsel so that the Government upon request can have your presence when needed upon a notice of at least the previous evening; that is to say, if they should want you tomorrow they will notify your counsel this evening.

Mr. Margolis: That is satisfactory.

The Court: Do all of you understand that? (Assent).

Very well. That will be the order of the Court.

Mr. Margolis: They may leave now?

The Court: They may leave now. [884]

BAPTISTE FALCONE

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Baptiste Falcone.

* * *

Direct Examination

By Mr. O'Malley:

Q. Your name is Baptiste Falcone, is that right?

A. Yes.

Q. You live in San Pedro?

A. Yes, sir.

Q. And what business are you in, Mr. Falcone?

A. Fisherman.

Q. How long have you been in that business?

A. Practically all my life, I guess.

Q. Are you a member of defendant Local 36?

A. No, sir.

Q. What size boat do you fish on?

A. Forty footer.

Q. What is the name of the boat?

A. Stella Maris.

Q. Do you have any ownership in the boat?

A. Partnership with my brother.

* * *

Q. (By Mr. O'Malley): Are you the skipper of the boat?

A. Yes, sir.

Q. What do you fish for, what kind of fish.

A. We fish mostly for shark and a few months in the summer for sea bass.

(Testimony of Baptiste Falcone)

The Court: Is that what is called—you fish for the fresh fish market?

The Witness: Fresh fish market.

Q. By Mr. O'Malley: What do you do with the carcass of the shark? [886]

A. We sell that to the fresh fish market, and the livens we sell to brokers.

Q. In what fishing port?

A. San Pedro. [887]

* * *

Q. Can you point to Mr. Sawyer in the court room?

A. Right back there (indicating).

(The defendant Sawyer stood up.)

Q. (By Mr. O'Malley): Is that the gentleman you refer to? A. Yes, sir.

Q. Can you tell us what was said by Mr. Sawyer?

A. Well, he came—there was a bunch of our fellows making a tanning tank to cure nets; he said, "You fellows have to picket to go out again, or else you have to stop fishing." So he told us to go to the office and see the officials over in the office to get a clearing card.

Q. By the office what do you mean. [888]

A. Local office.

Mr. Kenny: Your Honor, I would ask your Honor at this time, if you are disposed to instruct the jury as to the limited effect of the evidence regarding picketing and similar activities.

The Court: Yes, I think I shall make a statement to the jury.

(Testimony of Baptiste Falcone)

As indicated at the commencement of the trial, the defendants here are accused of a conspiracy to violate the Sherman Anti-trust Law. That is the only crime that they are accused of, and any evidence that is admitted is admitted because in my judgment it is material or competent or relevant to the allegations of the indictment concerning the commission of that offence. The defendants are not on trial for picketing or boycotting, or any other activity, and those activities are admissible in connection with this case because and only because they are relevant or material or competent to aid in your determination, if the case goes to you ultimately, at to whether or not they are guilty of a conspiracy. Is that clear to you?

Very well. [889]

Mr. O'Malley: I think it might be appropriate at this time—your Honor indicated the portion of the indictment to the jury under which this evidence concerning picketing is brought. Specifically directing your Honor's attention to Allegation (k) on page 7 of the indictment.

The Court: On page 12 of the indictment it charges—this is what is known as the charging part of the indictment——

“Begining some time prior to May, 1946, the exact date being unknown to the Grand Jurors, and continuing thereafter up to and including the date of the return of this Indictment, the defendants named herein, together with other persons to the Grand Jury unknown, have knowingly and continuously engaged in a wrongful and unlawful combina-

(Testimony of Baptiste Falcone)

tion and conspiracy formed and carried out in part within the Southern District of California, Central Division, to fix, determine, establish, and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans, which combination and conspiracy has been in restraint of the aforesaid trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, [890] as amended (26 Stat. 209, 15 U. S. C., Section 1), commonly known as the Sherman Act."

That the conspiracy is alleged to be:

"(a) agree to fix minimum prices to be charged by the fishermen for the sale of fresh fish and crustaceans caught by said fishermen in the fishing area and thereafter sold by the fishermen to dealers."

Do you want me to read all those?

Mr. O'Malley: Specifically Allegation (k).

The Court: They go on down through the alphabet, different items and different things that have been alleged to have been done by fishermen as part of the asserted agreement and conspiracy, (k) being:

"(k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-

(Testimony of Baptiste Falcone)

signing dealers, or in lieu thereof, had paid to Local 36, IFAWA a stipulated picket fee."

Mr. O'Malley: Thank you, your Honor. I think that takes care of it very adequately.

The Court: Does that conform to your request, Judge Kenny?

Mr. Kenny: It helps. We still don't waive our objection, however.

The Court: I understand, but you asked me if I was going to make a statement.

Mr. Kenny: It is a half loaf, as we see it, and we are grateful for that, your Honor.

The Court: Whether it is a half loaf or whether it isn't, the jury will be instructed to disregard that statement by counsel. It is a statement of what the charge is and the purpose and materiality of the evidence as it comes in.

In other words, you are not to get diverted on the matter of whether or not somebody did or didn't carry a picket on a certain date. That isn't what was charged here. It is whether or not it is a conspiracy and an agreement and combination to restrain trade as charged in the indictment.

Q. (By Mr. O'Malley): You testified that you had a conversation with Mr. Sawyer?

A. Yes.

Q. What did you then do?

A. Well, he told us to go to the union office to get a clearance to go out fishing again.

Q. Did you do that?

A. Yes, sir.

(Testimony of Baptiste Falcone)

Q. Where did you go?

A. To the union office.

Q. By the "union office" do you mean the office of this organization which calls itself Local 36?

A. Yes.

Q. Where is that office located?

A. The old Southern Pacific slip. That would be Berth 73.

Q. At San Pedro? A. Yes, sir.

Q. Who did you see when you got to the union hall?

A. Mr. Smith was there and Mr. Knowlton, Gilbert Zafranovich and a few other fellows were there.

Q. Will you point to Mr. Smith?

A. He is on the far side in the brown suit.

Q. Indicating Mr. Smith.

And did you see Mr. Zafran?

A. There he is back there.

Q. The gentleman in the sport coat?

A. Yes.

The Court: And who else did you say?

The Witness: Knowlton, the fellow in the white shirt.

Q. (By Mr. O'Malley). What was said to you by these gentlemen, if anything?

A. We went in and asked them for a clearance card, so they said they had to call a little meeting. We had to step outside for a few minutes to see what they would decide, and finally they said that they would give us a card according we did picket duty.

(Testimony of Baptiste Falcone)

Q. You could get a clearance card if you did picket duty?

A. Yes, sir.

Q. Was there anything said about where you could sell your fish?

A. On the dock down there Tommy said we could either take the fish to Newport and deliver it to the Cooperative, Western Cannery and Poladini, but other boats were down there told me, don't go there, they don't take shark carcasses, and it will save you a lot of time and trouble. So I didn't bring any down there.

Q. What did you do with the shark carcasses during the period of the strike?

A. Threw them overboard, the biggest part of them.

Q. You were unable to sell them during the period of the strike?

A. Yes, sir. [894]

* * *

Q. Did you sell the fish at San Pedro?

The Witness: No, sir.

The Court: Did you sell any fish in June?

* * *

The Witness: I sold some livers.

The Court: You sold some livers?

The Witness: Yes.

Q. Are those sold to the fresh fish dealers?

The Witness: No, sold to a broker.

(Testimony of Baptiste Falcone)

The Court: Did you sell any fresh fish at all in June?

The Witness: No.

* * *

Q. (By Mr. O'Malley): Was anything else said by any of the defendants that you have not indicated?. [896]

A. Not that I recall.

Q. You started to tell us about another conversation. Could you tell us what that conversation was?

The Court: Tell us where it was and who it was with.

* * *

A. Later on we was talking with Tommy one day——

Q. What Tommy do you mean?

A. Sawyer. He says, "If you guys don't picket we might make it tough for you."

* * *

The Court: Where was the conversation?

The Witness: Down on the fish dock.

* * *

Q. (By Mr. O'Malley): Was that during the course of the strike?

A. Yes.

* * *

Q. Will you finish the conversation?

A. He came to us and he says, "If you don't picket you might not go fishing again."

So I said, "Why we will go picket as long you leave us work."

(Testimony of Baptiste Falcone)

That is when we got that card, we went out fishing and we did the picketing.

Q. Was that the substance of your conversation?

A. Yes.

Q. Mr. Falcone, have you ever been employed by any fish dealer?

A. No, sir.

Q. Do you work under their direction and control in any way?

A. No, sir; we are strictly an independent boat.

Q. You don't receive any wages or salary?

A. No, sir, not unless we get the fish we don't get no salary.

Q. Is your compensation paid—how is your compensation paid for your fishing?

A. We sell the catch and then at the end of the week when we get our slips we divide it, one share for myself, one share for the boat, one share for the gear and one share for [898] each member of the crew.

Q. And if there is a loss, who bears the loss?

A. I bear the loss.

Mr. O'Malley: Your witness.

Cross-Examination

By Mr. Kenny:

Q. Mr. Falcone, you are not a member of the union but you are a member of the Small Boat Owners Association, aren't you?

A. Yes.

Q. On occasion you haul your fish, don't you, into Los Angeles and sell your shark carcasses to Los Angeles dealers?

(Testimony of Baptiste Falcone)

A. No, sir.

Q. You never do that?

A. No, sir. I have no facilities to haul them in the first place.

Q. Are you always able to sell your shark carcasses, that is, you sell your livers to brokers?

A. Yes.

Q. Shark liver is used for vitamin pills?

A. That is separate. The carcasses we are always able to sell. If lots of them come down the price fluctuates down to 3 or 4 cents, but we still sell them.

Q. You have never had the experience in not being able to dispose of the shark carcass?

A. No, sir.

The Court: How about the other fresh fish you get?

The Witness: That is easily sold.

The Court: Easily sold?

The Witness: Sure.

Q. (By Mr. Kenny): The other fish you catch are the large sea bass?

A. Sea bass.

Mr. Kenny: That is all. [905]

* * *

Mr. Garrett: Do you know Mr. J. DiMassa, one of the dealers who testified here?

A. Yes.

Q. Have you ever been advanced any money by any of the fish dealers?

* * *

A. No, sir. [906]

* * *

NICK BOGDANICH

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Nick Bogdanich.

* * *

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation?

A. Fishing.

Q. How long have you been engaged in fishing?

A. Since 1921. I have been fishing all the time.

Q. Out of what port do you operate?

* * *

A. San Pedro. [915]

Q. How long have you been operating out of San Pedro?

A. Since 1921.

Q. Do you own your own boat?

A. Now, yes.

Q. How long have you owned your own boat?

A. Well, I built it in 1940.

Q. What is the name of it?

A. It was the Georgie Boy.

Q. The Georgie Boy?

A. The first one then I got——

Q. What is the name of your other boat?

A. Baby Clipper.

The Court: Do you have both of them now?

The Witness: No.

(Testimony of Nick Bogdanich)

The Court: You sold the Georgie Boy and now you have the Baby Clipper?

The Witness: That is right.

Q. (By Mr. Rubin): What kind of fish do you fish for, Mr. Bogdanich?

A. At that time I fish for barracuda.

Q. When you say "that time" what time did you refer to?

A. It was June.

Q. June of 1946? A. Yes. [916]

The Court: Were you fishing with the Georgie Boy then or the Baby Clipper?

The Witness: I was fishing with the Baby Clipper.

Q. (By Mr. Rubin): And to whom did you sell your fish in 1946?

A. Well, when it wasn't a strike we fished in San Pedro; when there was a strike we fish in Newport.

Q. Prior to the strike to whom did you sell your fish in San Pedro?

A. I bring the last fish in on Friday and I sell the fish two days before the strike.

Q. To whom did you sell that fish?

A. I remember I sell it to Ocean Market.

Q. Ocean Fish Company? A. Yes.

Q. Is that in San Pedro?

A. In San Pedro.

Q. Now after the two days before the strike, when did you stop fishing?

A. Well, because somebody say there was strike.

(Testimony of Nick Bogdanich)

Q. I see. Did you fish during the month of June at all?

A. Yes, I think so. We bring the fish to Newport.

* * *

Q. Now during the month of June, Mr. Bogdanich, did you go to the office of Local 36.

A. Yes, I go to picket.

Q. Did you go to the office of Local 36? Just answer that question yes or no.

A. Yes.

Q. Now did you talk to anybody there [918]

* * *

A. Yes.

Q. Who did you talk to?

A. To strike Comittee.

Q. And do you know who was on that strike committee?

A. I never seen before those guys.

Q. You never saw those persons before?

A. That is the first time I seen them in the strike committee.

Mr. Margolis: I move to strike the witness' testimony with regard to the strike committee on the ground that there is insufficient foundation to show that this witness knows what the committee was.

The Court: Motion denied.

Mr. Margolis: I would like to take the witness on voir dire.

The Court: No. Counsel is trying to get his voir dire in now.

(Testimony of Nick Bogdanich)

Q. (By Mr. Rubin): Did you talk to anyone at that time that is in the courtroom now?

A. I see Mr. Smith over there before. [919]

* * *

Q. (By Mr. Rubin): Mr. Bogdanich, when you went to the office of the union, who was the first person that you talked to, if you talked to anyone there?

A. Well, I asked Mr. Zafranovich how the chance to go fishing is, and then Zafranovich, he told me, "You have to do picketing, so many days picketing."

"All right."

Then I asked him who I have to see to have a clearance. He told me to go see the union office and find out from the strike committee.

Q. Where did this conversation with Mr. Zafran take place? A. I don't know.

Q. Where did you see him when you had this talk with him?

A. I seen him with the fish market.

Q. So that after that did you go to the union office? A. Next day.

Q. The next day? A. Yes.

Q. And did you talk to the people who were there? A. Yes.

Q. Will you again tell us who you saw there that you recognize in the courtroom? [921]

A. I don't know. I don't see no guy.

Q. Do you recognize anybody here who was there?

(Testimony of Nick Bogdanich)

A. Not in the office. I seen Mr. Smith and I seen——

* * *

Q. Did you see Mr. Smith at the meeting there in the union?

A. No, I no see him in the union hall. I see him in the fish market.

Q. Did you have a conversation with him in the fish market? A. How you mean?

Q. Did you talk with him at the fish market when you saw him? A. Yes.

* * *

Q. Now will you tell us what was said when you talked [922] with him at the fish market?

* * *

Q. Three days after the strike you talked to him?

A. Yes.

Q. Now what did you say to Mr. Smith and what did he say to you at that time?

A. He sold me, "You go fishing at Newport." That is all he told me.

Q. He said "you go fishing in Newport"?

A. Yes.

Q. Did you say anything else to him at that time?

A. Well, I asked him for permission—he told me they have to have picketing in union office. They give you a clearance and then you can go fishing. That is all he told me.

Q. Now you testified you went to the union office, is that right? A. Yes. [923]

(Testimony of Nick Bogdanich)

Q. Did anybody there give you anything?

A. Give me clearance.

Q. After you got this clearance, did you go fishing?
A. Next day I go fishing.

Q. Next day you went fishing? A. Yes.

Q. And where did you take your fish that you caught?
A. Over to Newport.

Q. And when you got to Newport did you show that card to anybody?
A. Yes.

Q. Do you know whether or not the person you showed the card to was a member of the union?

A. He is no more member of the union. He was a market man's brother.

Q. A market man's brother there at Newport?

A. Yes.

Q. Did you in fact do any picketing during the strike?
A. Yes.

Q. How many times did you picket, Mr. Bogdanich?

A. I picketed four days straight.

Q. You picketed four days straight?

A. I worked on the boat then I picketed at 6:00 o'clock in the afternoon to 10:00 at night.

Q. After you did picket duty, did you go fishing?

A. Yes, I got ready the boat and I go fishing.

Q. After you went fishing did you do any picket duty after that?

A. I stayed down below three days, then come one day to make the four hours. I go every three days.

(Testimony of Nick Bogdanich)

The Court: He said before that he picketed four days after he had finished his fishing on each of those days. Wasn't that your answer?

The Witness: Yes.

Q. (By Mr. Rubin): You are not a member of Local 36? A. No.

Q. Do you receive any salary or wages from any of the fish dealers? A. No.

Q. Do you work for any of the fish dealers?

A. I fish for them.

Q. You fish for them? A. Yes.

Q. Do the fish dealers have the right to tell you where to go and what fish to catch and when to catch it? A. No.

Mr. Margolis: Just a moment. We move to strike any answer as calling for a conclusion of the witness.

Mr. Rubin: If he knows.

The Court: Objection overruled. [925]

* * *

Q. Fish dealers have a right to tell you when to fish?

A. They never say anything to you. If you like to go fishing, you go; if not, you stay home.

Q. You can go fishing or you can stay home?

A. Like I feel like it. [927]

* * *

Cross Examination

By Mr. Kenny:

Q. You testified this morning that you customarily delivered your fish at San Pedro. Is it not a fact that for many years you have also delivered fish to Newport Beach? [933]

(Testimony of Nick Bogdanich)

A. Yes, we used to deliver fish to Newport Beach. Sometimes we deliver fish to Santa Barbara.

Q. Sometimes in Santa Barbara?

A. Yes. Sometimes we go, like the season, like before Christmas we fish at Santa Barbara, we deliver fish at Santa Barbara.

Q. If the fish are running you take them into Newport Beach?

A. Well, if it is the wartime we fish at Newport because San Pedro was closed. We fished at Newport.

Mr. Kenny: That is all. [934]

* * *

ROMOLO CHIGI,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Romolo Chigi.

The Clerk: Your address?

The Witness: 2561½ Fourteenth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Chigi? A. Fisherman. [939]

Q. How long have you been fishing?

A. Since 1923.

Q. And where do you fish?

(Testimony of Romolo Chigi.)

A. Fish in big boat, San Antonio IV, in purse seine.

Q. For how long? A. Since 1946.

Q. Until 1946? A. Yes, sir.

The Court: Since 1946, he said.

Q. (By Mr. Rubin): During May of 1946 what were you fishing on?

A. I start fishing around 17th or 18th May for barracuda. [940]

* * *

Q. And on what boat were you fishing?

A. Zene.

Q. Do you own that boat? A. Yes, sir.

Q. And where would you sell the fish that you caught on the Zene?

A. Every market, down at San Pedro.

Q. At San Pedro? A. Yes.

The Court: That is the fresh fish market?

The Witness: Fresh fish market.

Q. (By Mr. Rubin): In the month of June, 1946, do you know whether or not there was a strike in San Pedro?

A. Yes, I do. We were talking on the wharf there was going to be a strike.

Q. How long in advance of the strike did you know the strike was going to take place?

A. Probably a week before the strike go on.

* * *

Q. (By Mr. Rubin): Do you know the day of the week the strike took place?

A. I don't understand very well.

(Testimony of Romolo Chigi.)

Q. Do you know what date was the last day that you went fishing before the strike took place?

A. Yes, sir, I do.

Q. What day of the week was it?

A. Monday.

Q. What happened on Monday?

A. Well, there is a picket line down at the wharf.

Q. The strike took place on Monday?

A. Monday, 6:00 o'clock.

Q. When was the last time you went fishing before Monday? A. Sunday night.

Q. What were you fishing for Sunday night?

A. Barracuda.

Q. Where did you bring the barracuda?

A. I bring it to the market.

Q. And what did you do with the fish after you got it to the market on Sunday night?

A. I sell it to Ocean and I brought three boxes of fish, and I sell them about 4:30 in the morning.

Q. Is that to the Ocean Fish Company? [942]

A. Ocean Fish Company. I lose most of the fish. I kind of scared, I hook them up, it is no good, most of the fish go home.

Mr. Anderson: I didn't understand it.

The Court: Read it, Mr. Reporter.

(The record referred to was read by the reporter, as follows:

("A. I sell it to Ocean and I brought three boxes of fish, and I sell them about 4:30 in the morning.

(Testimony of Romolo Chigi.)

("Q. Is that to the Ocean Fish Company?

("A. Ocean Fish Company. I lose most of the fish. I kind of scared, I hook them up, it is no good, most of the fish go home.")

The Witness: Go overboard.

Mr. Rubin: Go overboard. All right.

Q. Did you go fishing the next day?

A. No, sir.

The Court: Let us understand that answer. Most of the fish, kind of scared and the fish go overboard? What do you mean by that? I do not think we quite understand your answer.

The Witness: Well, I come with fish on Sunday night. It was Monday morning.

The Court: You came in Monday morning?

The Witness: Monday morning I know the picket line was in there at 6:00 o'clock. [943]

The Court: 6:00 o'clock Monday morning?

The Witness: Yes.

The Court: Yes?

The Witness: I tried to sell the fish because I have the fish and I hate to throw them away, and it was a little better than a hundred dollars of fish. I tried to sell it and I got excited.

The Court: You got a sign?

The Witness: Excited, and I lost the fish. I no put the link good around the box and when it was half-way to go to the wharf the fish is gone, most of them overboard, some fall on the deck of the boat.

(Testimony of Romolo Chigi.)

The Court: That was an accident?

The Witness: An accident.

The Court: In unloading your fish from the boat to the wharf?

The Witness: Yes.

The Court: You had an accident and your fish went overboard?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Rubin): Now when was the next time you went fishing after that Sunday night?

A. I believe about 10 days after. More than 10 days, [944] I don't remember exactly; maybe 10, 11 or 12, something like that.

Q. During that 10 days, Mr. Chigi, did you have any talk with anyone who you see in the courtroom now? A. Yes, I did.

Q. Who did you have a talk with?

A. Mr. Smith, Mr. Tom——

Q. Mr. F. R. Smith over there?

A. Yes, sir.

Q. And Mr. Tom Sawyer over here?

A. Yes.

Q. Who did you talk to first? A. Tom.

Q. When did you talk to him with respect to the number of days after the strike started?

A. Well, I believe it was about 7, 8 days after the strike was on.

Q. Seven or eight days after the strike was on you talked to him?

A. I believe, I don't remember exactly the day, something like that.

(Testimony of Romolo Chigi.)

Q. Where was Mr. Sawyer when you first talked to him? A. Down on the wharf.

Q. Who else was there? A. Mr. Smith.

Q. Was he with Mr. Sawyer then?

A. Mr. Smith was sitting inside the car, Mr. Sawyer was outside the car.

Q. Now what did you say to Mr. Sawyer and what did Mr. Sawyer say to you?

* * *

The Court: You talked to Mr. Sawyer first?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Rubin): What did you say to Mr. Sawyer when you first talked to him? [946]

* * *

Q. What did he say to you?

A. He says, well, you can have no clear card because you got no picket.

* * *

Q. What else did he say to you then?

A. He said to me, he says, why I go out fishing last Sunday night when nobody else go out fishing?

Q. What did you say in answer to that?

A. Well, I say I need the money and I go out fishing. That is the only reason.

Q. What did he say, if anything?

A. He say I do something wrong, not supposed to go out fishing.

Q. Did you have any other conversation, or any other talk, with Mr. Sawyer then?

(Testimony of Romolo Chigi.)

A. No, that is all. I just go over there and ask him for the clear card.

Q. Did you talk to Mr. Smith?

A. He sent me to Mr. Smith and he talking to me about the clear card.

Q. Mr. Sawyer then took you to see Mr. Smith?

A. Yes. [947]

Q. Did you have a talk with Mr. Smith?

A. Yes.

Q. What did you ask Mr. Smith?

A. Same question.

Q. What did Mr. Smith tell you?

A. He say no.

Q. No what? A. No clear card for me.

Q. What did you say to him, if anything?

A. I say why? Everybody else go fishing, catching fish. I got the boat, I got the net, why should I stay home?

Q. What did he say?

A. He said, no clear card because I did something wrong that night.

Mr. Andersen: I can't hear that.

The Court: Because he went out that night.

Q. (By Mr. Rubin): Did you get a clear card?

A. I got it after.

Q. Did you get a clear card then?

A. After.

Q. No, at that time did you get one?

A. Not that time.

Q. When did you next talk to Mr. Sawyer?

A. About a couple of days. [948]

(Testimony of Romolo Chigi.)

Q. Where did that talk take place?

A. Down at the wharf in the gang.

Q. Who was with Mr. Sawyer that time?

A. Some of the other fellows.

Q. What did you say to Mr. Sawyer then?

A. I asked him again, can't I have the clear card.

Q. What did he say to you?

A. He said, well we give you the clear card you do picket like the rest of the boys.

Q. What did you say?

A. I said, yes I am going to picket.

Q. Did he say anything else to you then?

A. No.

Q. What did you do then, Mr. Chigi?

A. I go start in picketing.

Q. Did you get a clear card? A. No, sir.

Q. You didn't get a clear card then?

A. No, sir.

Q. You started to picket.

A. I started to picket.

Q. How many days did you picket?

A. Well, I believe three or four days. I don't remember exactly.

Q. In a row? [949] A. Yes, straight.

Q. How many hours each day?

A. Six to ten; 6:00 in the morning to 10:00 o'clock.

The Court: 6:00 in the morning to 10:00?

The Witness: To 10:00 o'clock in the morning. Four hours.

(Testimony of Romolo Chigi.)

Mr. Rubin: Will you mark this?

The Clerk: 9 and 10 for identification.

(The documents referred to were marked Government's Exhibits Nos. 9 and 10 for identification.)

Q. (By Mr. Rubin): Mr. Chigi, I show you what has been marked as Government's Exhibit No. 9 for identification. I will ask you if you ever saw that before. A. Yes, that is my card.

Q. That was your card? A. Yes.

Q. Who gave that card to you?

A. Mr. Sawyer.

Q. And do you know what these punch marks mean on that card?

A. Yes; four hours of picketing for every punch.

Q. Four hours of picketing for every punch, is that right? A. Yes. [950]

Q. And there are five punch marks, is that correct? A. Yes.

* * *

We offer Exhibit No. 9 for identification into evidence.

The Court: Admitted.

(The documents referred to were received in evidence and marked Government's Exhibit No. 9.)

Q. (By Mr. Rubin): Now, Mr. Chigi, after you did your picket duty, did they give you a clear card? A. Yes, sir.

(Testimony of Romolo Chigi.)

Q. I show you Government's Exhibit No. 10 for identification and ask you if that is the card they gave you.

A. Yes, sir.

Q. Who gave you that card?

A. Mr. Sawyer, Mr. Smith.

Mr. Rubin: We offer Government's Exhibit No. 10 for identification into evidence, your Honor.

The Court: Admitted. [951]

* * *

(The document referred to was received in evidence and marked Government's Exhibit No. 10.)

Q. (By Mr. Rubin): After you got this clear card, how many days fishing did that give you?

A. Three days.

Q. Who told you three days?

A. Mr. Sawyer.

Q. And did Mr. Sawyer tell you to do anything after the three days?

A. To report in back at San Pedro.

Q. Did you report back to San Pedro?

A. Yes, I do.

Q. Did you talk to him again?

A. Yes, sir.

Q. What did you ask him after you reported back?

A. He asked me to do some more picketing before I got some more clear card to go fishing.

Q. Who said that? A. Mr. Sawyer.

Q. Did you do some more picketing?

A. Yes, I do. [952]

(Testimony of Romolo Chigi.)

Q. How much did you picket the second time?

A. I believe about two days.

Q. Then did he give—— A. Six days.

Q. Then he gave you six days clearance?

A. Yes.

Q. Did you fish for six days?

A. Yes, I fish down at Newport.

Q. Did you deliver any of the fish you caught at all during that period to San Pedro?

A. No, sir.

Q. Were any instructions given to you as to where you should deliver that fish?

A. Yes, sir. He told me to go to Martin.

Q. What port is that located in?

A. In Newport.

Q. When you came back from your six days fishing, from your second trip out, did you have a further talk with Mr. Sawyer? A. Yes.

Q. Who else was present there?

A. Just alone, Mr. Sawyer.

Q. Just you and Mr. Sawyer?

A. Yes, sir.

Q. Will you tell the Court and jury, Mr. Chigi, what [953] was said then by you and Mr. Sawyer?

A. Well, I come in from Newport and I have the net in very bad damage by the shark, and I have the net on a rack, and I was fixing the net. Mr. Sawyer asked me to go and do some more picket line, and I told him, I said I can't. My net is in very bad condition. I got to fix.

(Testimony of Romolo Chigi.)

And he told me, he says, never mind your net. Go and picket, otherwise you can't go fishing no more.

I said, I can't. I won't go picketing. I want to take care of my net.

He said, if you don't go picketing I won't let you go out fishing.

And the argument—he told me, you don't go fishing and I fine you \$8 a fine and \$4 if you don't do the picketing.

I say, I am not going to pay. I refused to pay. But I am going to take my net back and I am going to quit fishing before I pay. What I did, I dried the net and I took it home.

Q. Did you go fishing on that small boat after that?

A. No, I go after the strike. For the duration of the strike I didn't fish no more.

Q. For the rest of the strike you didn't fish any more?

A. No. But the strike no last much longer, probably not four or five days after the argument.

Q. Mr. Chigi, where do you catch the fish, how far out [954] do you go?

A. Well, it depends. Sometimes you go two miles, or three miles. On the morning you come close to the coast again.

Q. Do you ever go out beyond three miles?

A. Sometimes, yes. [955]

* * *

(Testimony of Romolo Chigi.)

Q. (By Mr. Rubin): Did you ever join the union, Mr. Chigi? A. Yes, I do.

Q. And when did you join the union with reference—withdraw that. Were you a member of the union before you did picket duty?

A. No, sir.

Q. When did you join the union?

A. I joined the union before they gave me the clear card.

Q. And did you have any conversation with anybody about joining the union?

A. No, sir; it was my own idea.

Q. So you did picket duty and then you joined the union, is that right? A. Yes.

Q. Did you go to the union hall?

A. Yes, sir.

Q. Did you pay any money? A. Yes, sir.

Q. How much did you pay?

A. \$10 and \$4. [956]

* * *

Q. (By Mr. Rubin): Did you ever receive any notices of meetings of the union after that time?

A. No.

* * *

Q. (By Mr. Rubin): Did you ever go to any meetings after that time? A. No, sir. [957]

* * *

MARIO BREGANTE

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Mario Bregante.

The Clerk: Your address?

The Witness: 671 West Ninth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Bregante? A. Fisherman.

Q. How long have you been so engaged?

A. I start fishing since I was eleven years old, still at it; I am thirty-six.

Q. Have you been fishing continuously since that time?

A. No. I was in the service there for two years—two months minus three years.

Q. When did you get out of the service?

A. May 2nd.

Q. Of what year? A. 1945.

Q. And thereafter did you commence fishing?

A. Yes, sir.

Q. On what boat? A. Bobby Boy. [961]

Q. For what type of fish did you fish?

A. Sea bass.

Q. Out of what port? A. San Pedro.

Q. And where did you sell this fish when you caught it? A. Fresh fish market.

(Testimony of Mario Bregante.)

Q. Calling your attention to the latter part of May, 1946, do you know whether or not there was a so-called strike at San Pedro?

A. No, I didn't know at the time until we come in that Monday morning.

Q. Until you came in that Monday morning?

A. Yes, sir.

Q. Was that the Monday morning the strike was called? A. Yes.

Q. I see. What did you see there when you came in?

A. I was called upon the dock and asked to stop fishing.

Q. Just a minute. Who called you upon the dock?

A. One of the—I think his name was George. I talked to George upon the dock. [962]

* * *

The Court: Do you see him in the court room here?

The Witness: Yes, he is sitting right here (indicating).

The Court: Which one?

The Witness: The fellow in the white shirt.

Mr. Rubin: Let the record show the witness is referring to Mr. George Knowlton.

Q. (By Mr. Rubin): Mr. Knowlton called you on the dock?

A. I talked to him on the dock.

* * *

(Testimony of Mario Bregante.)

Q. (By Mr. Rubin): Did you have a conversation with Mr. Knowlton at that time, have a talk with him?

A. Yes, he just told us to stop, and we stopped.

Q. Who else was present, Mr. Bregante?

A. No one that I remember.

Q. Just yourself and Mr. Knowlton? [963]

A. Yes, sir.

Q. All right. What did Mr. Knowlton say to you?

A. Just asked us to stop fishing and we stopped.

Q. Did you say anything to him?

A. No, sir.

Q. For how long——

The Court: Did he assign any reason to stop fishing?

The Witness: Just there was a strike on and just asked us to stop, and we didn't know there was a strike on, and we just stopped.

* * *

The Court: Just a minute. You said Mr. Knowlton talked to you and "we" stopped fishing; what do you mean?

The Witness: The boat.

The Court: The boat?

The Witness: Yes.

The Court: You are the only one on the boat?

The Witness: No; there is five of us on the boat.

The Court: Five of you on the boat?

The Witness: Yes.

(Testimony of Mario Bregante.)

Q. (By Mr. Rubin): I see. And when did you talk to Mr. Sawyer?

A. Well, that was—I guess about three weeks, you know, the strike was going on.

Q. Did you do any fishing during that three weeks?

A. No, we went out fishing a week after that for sardines.

Q. For sardines?

A. Yes, we went out one day.

Q. You went out one day? A. Yes, sir.

Q. And did you have any conversation with any of the union men before you went out fishing for sardines? A. No.

Q. Where did you unload the sardines?

A. In Wilmington.

Q. At Wilmington? A. Yes.

Q. To a fresh fish market?

A. No; to a cannery.

Q. Before you went out fishing for fresh fish again, did you have any conversation with any union man at the dock or elsewhere? [965]

A. We took a walk down to the fish market and they told us that we had to go out picketing.

Q. Just a moment. Who is they?

A. Sawyer.

Q. Sawyer? A. Yes, sir.

Q. And where was that conversation?

A. On the fish dock.

Q. Who else was there?

A. I think he was the only one there.

(Testimony of Mario Bregante.)

Q. All right. What did Mr. Sawyer tell you?

A. They told us we had to go on picket duty.

Q. Did he tell you anything else then?

A. No, not that time there.

Q. And what did you say to him?

A. That we had work to do on the boat, that we weren't able to do any picket duty.

Q. Did Mr. Sawyer say anything, and if so, what?

A. No, he didn't say nothing that first time there.

Q. Did you have a later conversation with him?

A. Yes, I think it was a day or two later.

Q. Where did that conversation take place?

A. Same; on the fish dock.

Q. Who was present at that time?

A. I think he was alone. There was a couple of fellows [966] there, but I spoke to him alone.

Q. What did he say to you and what did you say to him?

A. He told us that we had to go on picket duty or otherwise we would have to pay for our picketing.

Q. Did he tell you how much?

A. It was \$12.

Q. Did he say anything else at that time?

A. No, sir.

Q. Did you say anything to him at that time?

A. No.

Q. Did you go fishing? A. No.

Q. Did you have any conversation with him after that? A. No.

(Testimony of Mario Bregante.)

Q. Did you ever go fishing?

A. No; just after the second time we paid.

Q. After the second time you paid?

A. Yes; we paid twice.

Q. After you had this second conversation with him did you pay anything?

A. Yes, we paid \$16.

Q. To whom did you pay it?

A. To Tom Sawyer.

Q. Did he give you anything in return for that?

A. I think he gave us a slip there stating that we paid [967] the money.

Q. And then did you go fishing?

A. We just went out the one day.

Q. One day? A. Yes, sir.

Q. Did you go out after that during the strike?

A. No, we didn't go out any more.

Q. You fished how many days?

A. Just that one day during the whole strike.

Q. Did you pay anything besides the \$16?

A. No, sir.

Q. Did you ever do any picket duty?

A. No, sir.

Q. Are you a member of the union?

A. No, sir.

Q. Do you work for a salary or a wage for any of the fish dealers on the fish pier at San Pedro?

A. No, sir.

* * *

Q. (By Mr. Rubin): How many men in your crew? [968] A. Five.

(Testimony of Mario Bregante.)

The Court: Are you the captain?

The Witness: No, sir.

Q. (By Mr. Rubin): What do you fish for?

A. Mackerel, Spanish mackerel.

The Court: You don't throw the others back in the sea, do you?

The Witness: No. We find a school of mackerel, Spanish mackerel, or sardines, and we make a haul.

Q. (By Mr. Rubin): Is the catch sold in San Pedro? A. Yes.

Q. To who is it sold?

A. To the fresh fish market.

The Court: Who determines among the crew who is going to sell the fish or who you are going to sell it to, or what price you will sell it at?

The Witness: The skipper. That is the old man.

* * *

The Court: He decides that?

The Witness: Yes.

The Court: Does he consult with you?

The Witness: No.

The Court: He makes the decision?

The Witness: Yes. [969]

The Court: And do you fish on a share basis?

The Witness: Yes, share basis.

Q. (By Mr. Rubin): And divide the profits?

A. Yes, sir.

Q. I believe you testified that you didn't go fishing for almost three weeks after the strike was called? A. Yes.

(Testimony of Mario Bregante.)

Q. Do you know whether or not during that time barracuda or other species of fresh fish were running? A. They were.

Q. Do you know whether or not other boats were fishing?

A. Well, some of the boats were fishing, yes.

Q. And during that time why didn't you go fishing?

A. We couldn't go out fishing because we all had a round haul net. You can't go out fishing with a round haul net for barracuda or stuff like that, because it is against the law.

Q. What type of fish is your net equipped to fish for?

A. Mackerel, sardines, Spanish mackerel, anything for a round haul.

Q. Were those fish running during that time?

A. Yes.

Q. Why didn't you go fishing for that type of fish? A. We were scared.

Mr. Andersen: I move that be stricken, may it please [970] the court. It is a conclusion and opinion of the witness, and no foundation laid for such a remark as that.

Mr. Rubin: An expression of a state of mind, if your Honor please, and the cases so hold.

Mr. Andersen: It is clearly an opinion and conclusion of the witness, and was not responsive to any question asked.

The Court: You said the cases hold that?

Mr. Rubin: My understanding, if your Honor

(Testimony of Mario Bregante.)

please, is that the witness can testify as to his own state of mind as to the reason for a certain type of conduct. It is not a conclusion, because a conclusion, as I understand, is a deduction from some outside fact which this man perceives and then thinks about and decides. This is a statement that only this man can testify about, and that is the reason that he didn't go out fishing during this three-week period when his fish were running. We submit, if your Honor please, it is a proper question and it is a proper answer.

Mr. Andersen: May it please the court, there is no question but what under certain circumstances people may testify as to a state of mind. But that is only when the surrounding circumstances are such that a reasonable person could draw the same conclusion, such as if a person is in a house which is on fire—the person could naturally state that they were afraid because there are surrounding circumstances. But if we view this man's testimony, referring to all the conversations [971] he had with the business agent, they were very friendly; the first conversation the business agent said, "We want you to do picket duty," and the witness said, "We are too busy"—

The Court: Let's not argue the evidence.

Mr. Rubin: I can discuss that phase too, if the court please.

Mr. Andersen: So there is no surrounding basis from which, as a reasonable person, he could state that he would be scared. Otherwise there would be

(Testimony of Mario Bregante.)

absolutely no limit to a man expressing his opinion.

The Court: I don't think there is an unlimited permission to express his opinion. I have been sustaining objections to the same type of question to other witnesses.

Mr. Rubin: Your Honor, I don't want to argue the facts before the jury, if your Honor please. I think that I stated it in such a fashion that would indicate that there is enough evidence from this witness to form the basis for his expression of opinion as to his state of mind. One thing I can call your Honor's attention to: They pulled up and one of the defendants in this case said, "You can't go fishing; stop fishing," and then he didn't fish for three weeks.

The Court: I think I will sustain the objection, that is a question that the jury will have to decide, and strike the answer.

Mr. Andersen: Thank you, your Honor. [972]

The Court: Don't thank me. I don't do things to be thanked; I do them because I think it is the only thing to do.

Mr. Andersen: I move my remark be stricken, your Honor.

Mr. Rubin: No further questions.

Cross-Examination

By Mr. Kenny:

Q. The Bobbie Boy was one of the boats that you fished on, wasn't it? A. That is right.

(Testimony of Mario Bregante.)

Q. That boat was owned by the State Fish Company, wasn't it? A. That is right.

Q. And you worked for the State Fish Company when you worked for them? A. That is right.

Q. And you had to deliver all of your fish to the State Fish Company? A. Yes, we were.

Q. And the State Fish Company is one of the fish dealers on the wharf there at San Pedro?

A. Yes, they are.

Mr. Kenny: That is all.

* * *

FILLIPO GUGLIELMO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Guglielmo? A. Fishing.

Q. How long have you been so engaged?

A. About four and a half years before I went in the Army.

Q. When did you come out of the service?

A. May 19, 1946.

* * *

Q. Were you fishing during the month of May, 1946, after you were discharged from the service?

A. No.

(Testimony of Fillipo Guglielmo.)

Q. When did you start fishing?

A. I don't know; in June sometime.

Q. On what boat did you fish?

A. My own boat; the Solano.

Q. Do you own that boat? A. Right.

Q. What type of fish did you go out to catch?

* * *

Q. What type of fish did you go out for?

A. Sea bass.

Q. Where did you sell your catch, Mr. Guglielmo? A. Pedro.

The Court: The fresh fish market or the canneries, which?

The Witness: Fresh fish market. [976]

Q. (By Mr. Rubin): During what time did you sell your fish at San Pedro?

A. 8:00 o'clock at nighttime.

Q. Is that the usual time when boats come in to unload? A. No.

Q. During the month of June did you have any conversation with any of the persons that you see here in the courtroom? A. Yes.

Q. With whom? A. That guy there.

* * *

Mr. Rubin: Let the record indicate that Mr. Zafran has been identified.

The Court: Mr. Zafran, will you stand up?

(The defendant Zafran stood.)

The Court: Is that the man?

The Witness: Yes.

(Testimony of Fillipo Guglielmo.)

Q. (By Mr. Rubin): When did you have this conversation with Mr. Zafran?

A. I don't know, during the strike.

Q. During the strike? [977] A. Yes.

Q. Where did this conversation take place?

A. In the fish market.

Q. At the fish market? A. Right.

Q. At the wharf down there? A. Right.

Q. Who else was present? Were any of the other persons that you see here present during that conversation?

A. I don't know. A whole bunch of guys were there.

Q. What was said by you to Mr. Zafran and what Mr. Zafran say to you at the conversation?

A. To cooperate with them.

* * *

Q. Who here did you talk to during the strike?

A. Sawyer back there.

Q. Mr. Sawyer?

A. Yes, on the picket line.

Q. On the picket line? A. Yes.

Q. What did you say to Mr. Sawyer and what did he say to you? [980]

* * *

The Court: Without relation to the time of the month, do you remember the occasion of the strike beginning, how many days after the strike began did you talk to Sawyer, can you fix it something like that?

(Testimony of Fillipo Guglielmo.)

The Witness: The day I wanted to go fishing, I went down and asked him for a clearance card.

The Court: When was the day you wanted to go fishing.

The Witness: When he started issuing them. I don't know what date that was.

The Court: When they started issuing them?

The Witness: Yes.

The Court: Very well.

Mr. Rubin: Will you mark this, Mr. Clerk?

(The document referred to was marked Government's Exhibit No. 11 for identification.)

Q. (By Mr. Rubin): Mr. Guglielmo, I show you what has been marked Government's Exhibit No. 12 for identification and ask you if you have——

Mr. Andersen: There will be no objection to those going into evidence.

The Court: Do you offer them in evidence?

Mr. Rubin: I would like to ask this question first, if your Honor please.

Q. Did you ever see that card before?

A. Yes, it is mine.

Mr. Rubin: May Exhibit No. 12 and Exhibit No. 13 for identification be admitted at this time, if your Honor please, as Government's Exhibit next in order consecutively?

The Court: Very well.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 12 and 13 respectively.) [982]

The Clerk: What about No. 11, Mr. Rubin?

(Testimony of Fillipo Guglielmo.)

Mr. Rubin: No. 11 is not being offered at this time.

Q. I show you Government's Exhibit No. 12 and ask you who gave you that card.

A. The committee down at the fishermen's slip.

* * *

Q. A committee composed of whom?

A. That guy, George Knowlton.

* * *

Q. Let the record show Mr. Knowlton has been indicated. Who else? A. Smithy back there.

Q. Let the record show Mr. F. R. Smith has been indicated.

* * *

The Court: Which card are you referring to now? Will you pick it up?

The Witness: (Indicating card.)

The Court: What is that number? That is No. 13? [983]

The Witness: Yes.

The Court: That was given to you by these men, is that right?

The Witness: The comimtee; yes.

Q. (By Mr. Rubin): Did you have a conversation with those men at the time that that card was given to you?

A. I just asked them, I wanted to get a clearance card to go out.

Q. Where was this conversation?

A. Down at the fishermen's slip down at the building.

Q. How long after the strike started did you have this conversation with them, Mr. Guglielmo?

(Testimony of Fillipo Guglielmo.)

A. About a week.

Q. What did they answer you when you asked them that question?

A. They had a vote on it.

Q. Did they say anything to you when you asked them that question?

A. Told me to go outside and they would vote on it.

Q. Did you go outside? A. Yes.

Q. And then what happened after you got outside? A. They called me back in.

Q. Did they say anything to you? [984]

A. I had to put in four hours of picketing.

Q. Do you recall which specific person told you that? A. No.

* * *

Q. Did you go fishing after that?

A. After I put my four hours in.

Q. Where did you picket?

A. In front of the fish markets.

Q. How many days did you go fishing after you did your picketing there? A. Three.

Q. Then did you come back?

A. Yes, to have the card punched to go out again.

Q. Who punched the card?

A. Sawyer back there.

Q. Who. A. Sawyer.

Q. Let the record show that Mr. Sawyer has been indicated [985]

After Mr. Sawyer punched your card, did you go out fishing again? A. Right.

(Testimony of Fillipo Guglielmo.)

Q. For how many days?

A. Then I kept going all the time and I paid. I would come in and I paid and went back out.

Q. Who did you pay?

A. I don't see him—that guy in the corner back there.

Mr. Rubin: Will you stand, please?

* * *

Q. May the record show Mr. Kennison has been indicated?

Did you have a conversation with Mr. Kennison before you paid him anything? A. No.

Q. Did you talk with him? A. No. [986]

Q. Why did you pay him anything?

A. So I could go out.

Q. Pardon me?

A. To have my picket taken care of so I could go out.

Q. How much did you pay? A. \$8.

The Court: You mean altogether?

The Witness: \$4 for my brother and \$4 for me.

The Court: \$8 at one time?

The Witness: Yes; \$4 for my brother and \$4 for me.

The Court: \$4 for your brother and \$4 for you?

The Witness: Yes.

Mr. Rubin: I think that is all, your Honor.

Cross-Examination

By Mr. Kenny:

Q. You are a member of the Small Boat Owners Association? A. Right. [987]

* * *

JOHN JOSEPH DEMEGLIO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Demeglio, with what company are you associated?

A. Los Angeles Fish & Oyster Company.

Q. Are you a member of that firm?

A. Yes, sir.

Q. Were you a member of that firm in May of 1946?

A. Yes, sir.

Q. Some time in May, 1946, were you handed a contract like Government's Exhibit No. 3 which I now hand you?

A. Yes, sir.

Q. Where did this take place? [988]

A. Down at the L. A. Fish & Oyster Company.

Q. At San Pedro?

A. At San Pedro.

Q. Do you recall the date?

A. No, I don't right offhand.

Q. With reference to the so-called strike that took place there, do you recall how long before that?

A. Well, I don't know; about a month, some thing like that.

Q. Is that your best recollection?

A. Yes.

Q. At what time of the day, do you recall?

A. It was in the morning sometime. I don't know exactly the exact time. [989]

Q. And who handed you the contract?

A. Well, there was three fellows there. Gilbert Zanfran was one of the boys; but the other two—I don't know the other two boys.

(Testimony of John Joseph Demeglio)

Q. Do you see Mr. Gilbert Zanfran in the court room?

A. Yes, he is right there. (Indicating)

Mr. Schwartz: May the record show the witness indicated the defendant Zanfran.

Q. (By Mr. Schwartz): What happened on that occasion?

A. He just handed me that and he says, "You look it over, look it over and sign it, and then we will pick it up." That is all he says.

Q. Then what happened?

A. I took the contract and brought it in the office, and I didn't do a thing about it.

Q. Did you say anything to him at that time?

A. No, nothing.

Q. Did he say anything else to you?

A. No.

Mr. Schwartz: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. You say that according to your best recollection it was about a month before the strike?

A. Something like that. [990]

Q. That is your best recollection?

A. That's right.

Q. Was he there 10 or 15 minutes talking to you about it?

A. Not very long; just a few minutes.

Q. And suggested to you that you read the contract over, did he?

A. That's right.

(Testimony of John Joseph Demeglio)

Q. And then did he suggest that you either get ahold of him or that he would get ahold of you to discuss the signing of the contract?

A. We would sign it and they would pick it up.

Q. When he asked you to sign it, implicit in what he told you, he told you, I assume, if the contract was agreeable to you that you would sign it, is that correct?

* * *

A. He didn't say that. He said, "Here is the contract." He didn't say whether it is agreeable or not.

Q. (By Mr. Andersen): Had you had any previous discussion then about any contract to be signed or to be presented to you? A. No, sir.

* * *

Q. (By Mr. Andersen): Had you had any previous discussion then about any contact to be presented to you? A. No, sir.

* * *

Q. (By Mr. Andersen): Then is this the first time that the matter of the contract of this kind was presented to you?

A. To me it was, yes, sir.

Q. You had no previous knowledge or indication about it? A. Not me.

Q. And at that time was there any strike talk?

A. No.

Q. And did you subsequently read the contract?

A. I just handed it to my partners. They read it.

(Testimony of John Joseph Demeglio)

Q. I beg your pardon?

A. I handed the contract to my partners. They read it over.

Q. You have one or two or more partners?

A. Yes, sir.

Q. Did you thereafter get in touch with Mr. Zafran or the union?

A. No, sir; they came around later on. I never got in touch with them at all.

Q. They came around to your place of business later on, but I assume you didn't talk to them?

A. They came around and wanted to know whether I signed the contract or not.

Q. What did you tell them?

A. I said we didn't sign anything.

Q. I beg your pardon? [992]

A. I told them we didn't sign anything.

Q. I assume that you said that you wouldn't sign the contract as drawn? A. That's right.

Q. And didn't Mr. Zafran at that time tell you, "Well, if you won't sign the contract as it is, we can make some changes and discuss it"?

A. He didn't say anything to me about it.

Q. Do you know if that was discussed with any of your partners? A. I do not.

Q. You have no knowledge about that?

A. No.

* * *

WALTER T. VESTAL,

called as a witness by and on behalf of the government, having been first duly sworn, was examined testified as follows: [993]

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Vestal, what is your business or occupation? A. Fisherman.

Q. How long has that been your business?

A. It has been my business off and on until about 1937, which I went into it total; it is all my-business now.

The Court: You mean up until 1937 you were a fisherman off and on, and since then you are a fisherman all the time?

The Witness: Yes.

Q. (By Mr. Schwartz): Mr. Vestal, have you been a boat owner or worked on a boat as a member of a crew, or both?

A. I have worked on a boat as a member of the crew, and I have also owned my own boats.

Q. In 1946, in May, what were you doing by way of work?

A. I was working with a cannery while my new boat was in construction in San Diego.

Q. At that time were you a member of Local 36?

A. Yes.

Q. At that time or in May or June, 1946, did you have any conversation with any of the people in this courtroom that you may see with regard to your participation in a so-called strike?

(Testimony of Walter T. Vestal.)

A. Yes, I did. I had conversation with Gilbert Zafran and George Knowlton, Red Meachem which he is not here. [994]

* * *

Q. (By Mr. Schwartz): All right. When did these conversations take place or did this conversation take place, the best you recall?

A. The conversation that took place with the boys was over at the union—not the hall, but the office.

Q. When?

A. I couldn't give you the approximate date or anything like that, but it was during the strike.

Q. What was said at that time? [995]

* * *

A. I was informed that I should go on picket duty and do my duty toward the Local as being a member of it, that I should do picket duty so that I could go out fishing when I got my new boat, that I would have enough time chalked up against the new boat that I could go ahead and get a permit to go out fishing with it.

Q. Who said that?

A. That was given to me by two or three members in the hall there—not in the hall, in the office there at that time, and the picket captain.

Q. Do you remember his name?

A. Well, the picket captain was Tom Sawyer.

Q. Do you see him in the court room?

A. Yes; right there (indicating).

Q. Go ahead.

(Testimony of Walter T. Vestal.)

A. And George Knowlton also told me that I should do it, otherwise I wouldn't be able to get out and fish. And then my crew members, for me to tell my crew members that they should also come down and picket, and that time would go against the boat also, so that we could get out sooner if the strike prolonged, and that way we would be able to fish when the season came on, and I got the boat.

Q. What did you say?

A. Well, I told him at that time I didn't see why I had to come over and picket, because the boat was being built [996] in San Diego, and since about January I had sold the other boat, and this boat was under construction, in the meantime I was working for the cannery, operating one of their boats over there and doing carpenter work in the cannery, and getting the barge ready for the season coming on, and I was also buying fish for the cannery, and I told him I didn't see how I could really get time. They told me that I could come there in the evening, do it some evening. And that is what I did. I came in the evening. I forget whether I put in eight or sixteen hours, but it is on my picket card. [997]

Q. Were you given any instructions with regard to what you were to do as a picket?

A. Yes. I had the instructions to keep my eyes open and parole a certain area there and if trucks came in to see what they unloaded and loaded, and if I knew where they went to, to get their names and

(Testimony of Walter T. Vestal.)

license number, and also that if any boats unloaded out in front, to see what boats they were, and not let them unload if possible.

Q. To do what?

A. Not to let them unload if I could possibly stop them.

Q. Were you given a picket card?

A. Yes.

Q. Do you have it with you?

A. Yes, I have. (Producing document)

Mr. Schwartz: Will you mark this for identification?

The Clerk: No. 14.

(The document referred to was marked Government's Exhibit No. 14 for identification.)

Q. (By Mr. Schwartz): I will show you what has been marked Government's Exhibit 14 for identification and ask you whether that is the picket card that you received.

A. Yes, this is my picket card.

Q. Who gave it to you? [998]

A. Tom Sawyer.

Q. Is there a signature on it? A. Yes.

Q. At the time you got it, was it signed?

A. Yes.

Q. There are holes punched in it. Can you tell us how that happened or when?

A. No. It is for the picket duty but what they account for—I know it counts for hours but I don't know how they read it here.

Q. Who punched it?

A. That I don't believe I can remember just who did, whether it was Sawyer or whether it was done in the office. I couldn't tell you that.

Q. Was it done in your presence?

A. I believe it was. I believe it was Sawyer that punched the card.

Q. At the union office?

A. No, it was down in his car, down where we did the picket duty at the markets.

Mr. Schwartz: We offer Government's Exhibit 14 in evidence, your Honor.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 14.) [999]

* * *

Q. (By Mr. Schwartz): You presently own your own boat, Mr. Vestal? A. Yes, I do.

Mr. Schwartz: You may cross examine.

Cross Examination

By Mr. Kenny:

Q. Mr. Vestal, when you had this conversation with Mr. Knowlton he discussed also with you the purposes of asking for a contract from the fish dealers, didn't he?

A. I don't quite remember whether he did or not. I wasn't at the meeting when the strike vote was taken, and he proposed that it was a raise in price on fish, to establish a minimum price on our catches. That is the understanding.

(Testimony of Walter T. Vestal.)

Q. And he told you, did he not, what the fishermen wanted was to know what price they were going to get before they went out and tried to catch fish, isn't that right? A. That is right.

Q. And when he told you to go—talking about your going on the picket line—he told you that you were not to use any violence at all, isn't that right?

A. That is correct.

Q. Your instructions were that there were to be no [1000] intimidation of any kind or threats or anything of that kind, is that right?

A. That is right.

* * *

EDWARD HAMILTON,

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Hamilton, what is your business or occupation? A. It is commercial fishing.

Q. Do you own your own boat?

A. No, sir.

Q. You are a crew member?

A. That is right.

Q. On what boat do you fish? [1001]

A. The California Girl.

Q. Who owns the California Girl?

A. Johnnie Tuffs.

(Testimony of Edward Hamilton.)

Q. Does the California Girl fish for the fresh fish market or for the canneries?

A. It fishes for the canneries primarily. It never has fished regularly for the market. It is strictly a cannery boat.

Q. Mr. Hamilton, are you a member of Local 36 of the International Fishermen and Allied Workers of America? A. Yes.

Q. When did you become a member of that organization?

A. I think it was along in June, in June some time.

Q. Of what year? A. Of '46. [1002]

* * *

Q. Will you state the circumstances under which you became a member of Local 36?

A. Well, I was approached by a member at various times to join the union, and I really thought that I—well, I really didn't care to belong to it. [1003]

* * *

Q. Who was the member that you are talking about? A. Gilbert Zafran.

* * *

Q. When was this? He said June 1946.

A. I believe it was in June.

Q. Do you remember approximately what day or date in June? A. No, I couldn't.

Q. The early part or latter part?

A. Well, it was probably in the early part. I was working at the cannery at the time, and not

(Testimony of Edward Hamilton.)

fishing, and at the time I belonged to the Cannery Workers Union, which is A.F. of L., and at that time I asked him if the union didn't recognize that Cannery Workers local and he said that it did.

Then later on he come and asked me to join the union, and I made the statement then, "Well, Gilbert, I understood you gave me to understand that you recognized this union."

He said, "Well, we do not," and that I would have to join the union to go fishing.

At the same time I was working at the cannery and I really didn't feel as I should join a union then while I was working in the cannery.

Q. Where did these conversations take place?

A. They took place on the dock in front of the cannery there, California Fish Corporation.

* * *

Q. You say you and the members of the California Girl crew went and joined the union?

A. That is right.

Q. Where did this take place? [1005]

A. That was at the union headquarters there in San Pedro.

Q. What happened there?

A. We went in, we paid our initiation fee, I believe it was, and then they had some picket fees charged against us which—I think I paid an \$8.00 picket fee as well as my initiation fee.

Q. How much was the initiation fee?

* * *

(Testimony of Edward Hamilton.)

The Witness: I don't recall. I don't know, it seemed like it was around \$14. I wouldn't say for sure.

* * *

The Witness: Then I believe I paid two months dues as well. [1006]

* * *

Q. Did you do any picketing?

A. No, sir.

Q. Were you given a picket card?

A. Yes.

Q. Do you have it with you?

A. No, I don't.

Q. I show you government's Exhibit 14 in evidence and [1007] ask you whether the picket card you received was like that one.

A. Yes, it was.

Q. Do you recall that there was a signature on it?

A. Yes, sir.

Q. Do you recall the signature on it?

A. It was Meachem.

* * *

Q. After you joined the union, what did you do?

The Court: With relation to what?

Q. (By Mr. Schwartz): Relating to this so-called strike situation.

A. Well, I never had anything to do with it in that way. We went fishing then.

Q. You went fishing on the California Girl?

A. Yes, sir.

Q. Was that for the cannery?

A. Yes, sir.

(Testimony of Edward Hamilton.)

Q. Did you have any further contact with any members of [1008] Local 36 thereafter?

A. No, I never had any personal contact.

Cross Examination

By Mr. Andersen:

Q. As I understand it, Mr. Hamilton, the boat on which you were engaged as a fisherman fished exclusively for the canneries during this time?

A. We have never had a trip for the markets.

Q. Then you fish for the canneries, is that correct? A. Yes.

Q. In other words, you didn't engage in the fresh fish market at all, simply the fish that was used by the canneries, such as tuna or sardines?

A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. And what cannery were you fishing for?

A. Southern California Fish Corporation.

Q. And that is a cannery at San Pedro?

A. Yes, sir. [1009]

Q. And you were asked to join the union, were you? A. Yes, I was.

Q. And you subsequently joined the union?

A. Yes.

Q. And you were advised, I assume, about certain union regulations, is that correct?

* * *

The Witness: Well, I don't know. It is just one of those things, you know. I had the books and one thing and another, and as far as—I never read them.

(Testimony of Edward Hamilton.)

Q. (By Mr. Andersen): You were given the constitution of the union, were you?

A. I believe I was.

Q. And you were given a copy of the by-laws of the union, were you? A. I believe so.

Q. You were given a copy of the regulations of the union, were you? A. Yes.

Q. The floor of the union was open to you at all times, was it? [1010]

A. I imagine it was.

Q. The office of the union was open at all times to you, was it? A. Yes.

Q. You had full freedom to express anything that you wished as far as the operation of the union was concerned, did you?

A. That's right.

Q. And you were told, I assume, that the union in its meetings had passed resolutions and motions, possibly, regarding picketing at one time or another? A. Right.

Q. You were told that, were you?

A. That's right.

Q. You were told, I assume, that all unions from time to time picket in an unfair situation; you were told that, were you?

A. I was told that, I believe.

Q. And you as a union member did not see fit to picket, nor did you picket, is that correct?

A. I did not picket. [1011]

(Testimony of Edward Hamilton.)

Redirect Examination

By Mr. Schwartz:

Q. Mr. Hamilton, were you in any way interested at that time in the constitution and by-laws of Local 36? A. I was not.

* * *

Q. (By Mr. Schwartz): Were you in any way interested in having the liberty or freedom of the union hall at that time? A. No, I wasn't.

Q. Were you in any way interested in any possible situation that Local 36 was or was not in at that time? A. I was not interested in it.

The Court: Do you have the copies of the by-laws and whatever data you got, the constitution?

The Witness: No, I don't think I have them, your Honor.

* * *

JOHN TUFTS,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows: [1012]

* * *

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation?

A. Commercial fisherman.

Q. How long has that been your business?

A. Well, I would say twenty-three years off and on.

(Testimony of John Tufts.)

Q. Do you own your own boat? A. I do.

Q. How long have you owned a boat?

A. Since 1936.

Q. Do you presently own a boat?

A. I beg your pardon?

Q. Do you own a boat at this time?

A. Yes.

Q. What is the name of your boat?

A. At present? California Girl.

Q. When did you get the California Girl?

A. California Girl was completed in August '45.

Q. How big a boat is the California Girl?

A. Forty-eight feet. [1013]

Q. And what is her value?

A. Well, I have around \$30,000 in it.

Q. How many people are required to fish the California Girl?

A. I have had a crew as high as five. Normally it is usually around four, I think.

Q. Out of what port does she operate?

A. San Pedro.

* * *

Q. (By Mr. Schwartz): What kind of fish do you go out for,—fresh fish or cannery fish?

A. Primarily cannery fish, at present.

Q. What do you mean "Primarily"? [1014]

A. That is, during the time that the boat was being built I did not fish any market fish at all, and since then I don't think I have delivered two or three hundred pounds to the fresh fish market.

(Testimony of John Tufts.)

Q. What portion of the catch do you sell to the fresh fish market? A. Very little, if any.

Q. Are you a member of Local 36 of the International Fishermen's and Allied Workers of America? A. I was a member, yes.

Q. When did you become a member of that organization?

A. Well, during the time of the market strike. I don't recall the date.

Q. Well, assuming that the so-called strike commenced on May 29th, when would you say you became a member of Local 36?

* * *

A. I can't remember that date. As I said before, it would be approximately a week or two after that particular time.

* * *

Q. Now, having that in mind, will you tell us the circumstances surrounding your joining this union, just tell us what happened, not what somebody told you.

A. Well, I can't recall any conversations with any particular person. I talked to George Knowlton and he did [1016] state, make the statement to me at the time that it looked like that I wouldn't be able to buy ice, it looked like I wouldn't be able to buy gasoline, and in that vein. That was the only man I talked to——

* * *

(Testimony of John Tufts.)

Q. (By Mr. Schwartz): What was the conversation that you were having with Knowlton at the time he made these statements which you have just testified to? What were you talking about?

A. We were just discussing whether I should join the union, I think it was, more or less in that vein, that—I know his idea was that we should all get in.

Q. Did he ask you to join the union?

A. I don't think he did.

Q. How did he put it to you?

A. Well, for the good of the fishermen, that was his vein.

Q. What did he say? [1017]

* * *

A. Well, it was—I think I have given it as close as I can remember it. That it was just merely that he was stressing that we would be out in the cold if we didn't have a union card. That is, the ice docks were union, and the fuel docks were union, and if we weren't union we wouldn't get any ice or fuel. That was more or less the idea.

* * *

Q. Did you join the union?

A. I did join the union.

Q. Where?

* * *

A. Over at the union hall.

Q. And what took place there?

A. Well, I took my crew over there, we wanted to go out, and we were told—I don't know exactly

(Testimony of John Tufts.)

who told who, but my crew told me, because they were the ones that naturally would have better hearing than I have, came to me with the information that we had all better join the union and get our clearance card before we go out.

Q. Were you in the union hall?

A. I was in the union hall, yes.

Q. And this took place in your presence?

A. Yes.

Q. What else happened in the union hall at the time you joined? Did you pay any money?

A. Well, as I remember, there was just more or less time getting clear, we were in there quite a while, I don't remember what held us up. I don't think we could find the picket captain to sign our clearance.

The Court: Read the question again.

Q. (By Mr. Schwartz): Did you all pay?

A. Yes, we all paid.

Q. How much did you pay?

* * *

A. Whatever the rest of them did I paid, and I can't remember what it was.

Q. Do you remember to whom you paid it?

* * *

A. Well, I think I paid Mr. Zanfran, and another member in there at the time was Meachem.

Q. Were you given a clearance card or any kind of card?

A. Yes sir, I was given a clearance card, a picket duty paid up to the date, and my book.

(Testimony of John Tufts.)

Q. Do you have your clearance card with you?

A. No; I have thrown it all overboard.

Q. I show you Government's Exhibit 13 and ask you whether you got a clearance card like that.

A. No, I don't remember whether we had a clearance card like that. I think mine was more or less—I can't remember whether it was that or not; I thought it was on a typewritten form of some sort, but I may be wrong.

Q. All right. I show you Exhibit 14, Government's Exhibit 14, and ask you whether your picket card looked like that.

A. Yes, I had a picket card. I remember that.

Q. Did it look like this Exhibit?

A. Yes, just exactly like that.

Q. At the time that Mr. Knowlton was talking to you about joining the union, did you indicate to him whether you wanted to join or not?

A. Well, my main objection to the thing was that I didn't believe that a boat owner owning a business and employing people had any business in a union. I could understand where we were wanted in there.

Q. What did he say to that? [1020]

A. And he said that his opinion of that was, as I remember, that we all had to pull together on that line, and the union was the only place that we should get in.

Q. And was that the reason that you joined the union?

A. I will tell you, to be truthful about it; the real reason I joined the union is because I was a little

(Testimony of John Tufts.)

more or less afraid something would happen to my boat. The boat was laying out in front of the cannery.

Mr. Andersen: Just a moment.

The Court: I think he is a lip reader.

Mr. Andersen: He has difficulty in hearing.

The Court: I notice that he doesn't seem to hear so well unless you are talking to him.

Mr. Andersen: I move the answer be stricken, may it please the court, as calling for an opinion and conclusion of the witness.

Mr. Schwartz: I submit the answer is entirely competent as to the state of mind.

Mr. Andersen: The point was argued a short time ago, your Honor.

The Court: Yes, the point was. I don't think that testimony is admissable.

I think it is up to the jury to draw a conclusion or not to draw one, as they may see fit, as to the reason why people do or don't do things, and this from the things that were [1021] said to them, or from all the circumstances.

Mr. Schwartz: If the court please, I submit what is in a man's mind, if it is there and he so states, is a fact, just like any other fact, and it would be asking the jury to do the impossible to find out what is in a man's mind.

The Court: Suppose that you had the teller of a bank on the witness stand in a bank robbery case, and the teller said, "Well, the defendant over there came up and put a Thompson machine gun through

(Testimony of John Tufts.)

the window at me and I handed him over \$25,000," —I don't think it would be competent to ask, "Why did you do it?"

Mr. Schwartz: I don't think it would be necessary.

The Court: He would say, "I did it because I was afraid." But the evidence is there for the jury to draw an inference one way or the other as they might see fit, and the same is true in this case. The objection is sustained. [1022]

* * *

Cross-Examination

By Mr. Andersen:

Q. You have known Mr. Knowlton for many years, haven't you? A. That is right.

Q. You and he are very good friends?

A. I think I am.

Q. How long have you known him?

A. Oh, since about 1918.

* * *

Q. You know his family, don't you?

A. Yes, I know his family.

* * *

Q. This discussion you had with him about the ice, and so forth, was it sort of a friendly discussion with him?

A. It was in a more or less friendly mood, I believe; yes. I think every discussion I have ever had with George, we have never had any hot words one way or the other.

(Testimony of John Tufts.)

Q. You never had any trouble with George, did you?
A. No, none whatsoever.

Q. Now with respect to this boat you have, do you still operate the California Girl?
A. I do.

Q. And you dropped out of the union because you learned that it is the policy of the union not to include the owners of large boats, isn't that true?

* * *

The Witness: No, that was my attitude at the start. I didn't believe that I belonged there. I dropped out on my own convictions.

Q. (By Mr. Andersen): And when was that?

A. My own convictions?

Q. No, when did you drop out?

A. What did I drop out?

Q. When did you drop out of the union or cease paying your dues or whatever you did?

A. I have never attended any of their meetings and I never paid any more dues.

Q. Since the first time?

A. Since the first time.

Q. I assume, however, that your crew belongs to the union?

A. I don't think any of them are paid up members in good standing.

Q. Now when you had this talk with Mr. Knowlton, you told him that you thought that the owners of a boat shouldn't be members of a union, is that right?

A. I have stressed that so many times, yes.

(Testimony of John Tuffs.)

Q. By the way, how many are in your crew?

A. Last summer there were five at that time, including [1025] myself.

Q. Do you still operate the same boat?

A. Yes.

Q. How many members are in the crew now?

A. The boat is tied up at present.

Q. In your conversation, when you mentioned that you didn't believe that the owners of a boat should be in the union, you mentioned that people who employed people shouldn't be in a union, is that what I understood you to say?

A. I stated that. They shouldn't be in the union.

Q. Do you pay any men for working for you?

A. Do I pay any men for working for me?

Q. Yes.

A. Yes, I have. Some of the times when Hamilton's wages haven't come up to \$50 I have dug down in my own pocket and made it up to \$50. You can ask them.

Q. How are the men who work for you paid?

A. They are paid on shares.

Q. And that is the custom in the industry, isn't it?

A. That is right.

Q. In other words, the custom is that if there is a catch they get paid and if there is no catch they don't get paid, isn't that the custom?

A. That is right. [1026]

* * *

(Testimony of John Tufts.)

Q. Mr. Knowlton suggested to you, did he not, that you comply with the regulations of the union, is that correct?

* * *

The Witness: I believe that was the suggestion when he said that I should get in the union with him.

Q. (By Mr. Andersen): And about picketing, I assume that he mentioned substantially the same statement about complying with the regulations of the union?

* * *

Q. That is, that it was a union regulation to picket? A. I understood that.

Q. Did he advise you that it was a union regulation to picket?

A. Well, I can't remember whether he advised me or not, but I don't even think that was brought up.

Q. But he did suggest that you should join the union? A. Yes, that is right.

Q. In order that you would have the benefits of not being declared unfair by labor, is that correct?

A. I don't know that the conversation carried into that vein at all.

Q. Then generally speaking he advised you about the strike itself, didn't he?

A. He made the statement.

Q. That there was a strike?

A. He made the statement on the gasoline and not being able to buy the ice, and as far as that

(Testimony of John Tufts.)

goes I think that was as far as the argument on the thing went, and I don't think there was much more said. [1028]

Q. Of course you told him about boat owners joining unions, you told him that, didn't you?

A. You will have to speak louder.

Q. You told him of course, as you mentioned a few minutes ago, that you thought that boat owners shouldn't be in unions?

A. Yes.

Q. You told him that?

A. That is right.

Q. And he told you, didn't he, the purpose of the strike that was going on, that is, that the men who manned these boats wanted to go out knowing before they went that they would get a certain price for what their labor would result in in a fish catch, he told you that, didn't he?

A. Yes, I believe so.

Q. Did you argue that point with him at all?

A. No, I don't know whether we did or not. We have had so many little arguments like that off and on previously that we didn't even have to bring that up. He knew where I stood and I knew where he stood.

Q. That is with Knowlton?

A. Yes.

Q. And all of these arguments that you have discussed were friendly arguments with an old friend of yours?

A. That is right. [1029]

Q. And there was no ill feeling of any kind?

A. There isn't any yet.

* * *

VITO PIZZO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. O'Malley:

Q. What do you do for a living, Mr. Pizzo?

A. I go fish for a living.

Q. How long have you been a fisherman, Mr. Pizzo?

A. A long time; all my life.

Q. All your life?

A. Seventeen years in San Pedro.

Q. Do you own your own boat?

A. Yes.

Q. What kind of fish do you fish for?

A. Well, sometimes I fish on shore for small fish.

Q. Fresh fish?

A. Yes, Smelts and other kind.

Q. Anchovies?

A. Yes.

Q. Where do you sell that fish?

A. I sell it to the market.

Q. In San Pedro?

A. Yes.

The Court: The fresh fish market?

The Witness: Yes.

Q. (By Mr. O'Malley): You know there was a strike called there last year?

A. Yes.

Q. In June, 1946?

A. Yes.

Q. Did you sell your fish in the fresh fish market in San Pedro during the strike?

A. No, I couldn't sell them because the strike no let me go out fishing, you know. [1031]

* * *

(Testimony of Vito Pizzo.)

Q. Were you able to sell your fish any place?

A. Well, I can't go some other place because my fish I catch I couldn't sell no place because they are small. Most of the fish I sell for bait.

* * *

Q. Did you do any picketing during the strike, Mr. [1032] Pizzo?

A. Yes, I went there two times I think.

Q. You went twice?

A. Yes, but I was painting my boat, you see.

The Court: You were painting your boat?

The Witness: Yes, and some of these guys came to me.

The Court: Do you see any of them here?

The Witness: That man over there, the old man.

Mr. O'Malley: Indicating the gentleman in the brown suit?

The Witness: I was painting my boat and he came over there and said, "You better do picketing."

I said, "I can't come over because I have to work on my boat. I have lots of work to do."

Then after a couple of days he came again and tell me again, and I said, "Well, I told you the first time I got no time to come over."

Well, after that I was figuring in my head, you know, where I go, because you know I am scared of something, so I went over a couple of times and after that I fished for albacore and then I come back.

(Testimony of Vito Pizzo.)

Mr. O'Malley: Let the record show that the witness indicates the defendant Kennison.

The Court: Yes.

Q. (By Mr. O'Malley): Did you fish inside or outside the 3-mile limit? [1033]

A. Sometimes 3 miles inside, sometimes outside.

Q. Are you employed by any dealer? Do you work for any dealer? Are you on a wage or salary from any dealer?

A. What do you mean?

Q. Do you receive a wage or a salary from any fish dealer in San Pedro?

A. I don't understand.

Q. You sell your fish to the fish dealers?

A. Yes.

Q. You don't get paid any salary or wages?

A. (Pause.) The fish I sell? I don't get you.

Mr. O'Malley: I will withdraw the question.

The Court: Does somebody pay you a salary every week or month or by the day or the hour?

The Witness: No, sir.

The Court: They do not?

The Witness: Nobody pay me anything. Just I get money for the fish I sell to them.

The Court: Your income is from the fish you sell?

The Witness: Yes, that is all.

Q. (By Mr. O'Malley): Are you a member of Local 36?

A. No, sir.

The Court: What is your boat?

The Witness. Jennie: I no belong to the union.

Q. (By Mr. O'Malley): Are you the owner of the boat?

(Testimony of Vito Pizzo.)

A. Yes, me and my brother-in-law; two guys.

Q. How much of an investment do you have in the boat? How much is the boat worth?

A. The boat is worth about \$7,000.

The Court: You and your brother are the only members of the crew, or do you have others?

The Witness: Me and my brother-in-law, two of us own the boat.

The Court: You and your brother-in-law?

The Witness: Yes.

The Court: And you are the only fishermen who fish on that boat?

The Witness: No, we fish about six guys.

The Court: You fish about six?

The Witness: Six guys altogether.

Mr. Andersen: Six what?

The Court: Six guys.

Q. (By Mr. O'Malley): Did you fish during the strike, Mr. Pizzo.

A. I tell you, I went out one week for albacore, just one week.

Q. You fished one week during the strike?

A. Yes. [1035]

Q. What did you do with your catch?

* * *

The Witness: I didn't catch any. I just went out fishing and come back home.

The Court: You didn't catch any fish and then you came home?

The Witness: Yes.

(Testimony of Vito Pizzo.)

Q. (By Mr. O'Malley): That is all the fishing you did during the strike?

A. Yes. I didn't catch any at all. I was going to try for albacore but I didn't catch any. I was working on my boat fixing it. It takes about two weeks to fix up.

The Court: Is that all?

Mr. O'Malley: That is all. Thank you very much.

The Court: Cross examine.

Cross-Examination

By Mr. Kenny:

Q. Mr. Pizzo, you said that you went fishing for albacore? A. Yes, sir.

Q. After the albacore came in, when was that during [1036] the strike?

A. Well, it was about two weeks later from the strike beginning. It was two weeks later, maybe two or three weeks.

The Court: Let me see now. The albacore came in then or you went out then?

The Witness: No, I went out.

The Court: You went out to fish?

The Witness: Yes.

The Court: I do not think you understood counsel's question.

The Witness: I went out once before the strike was over, one week before the strike was over.

The Court: One week before the strike was over you went out and caught no albacore?

The Witness: Yes.

(Testimony of Vito Pizzo.)

The Court: Now counsel asked you when did the albacore come in.

Q. (By Mr. Kenny): I should say, when did you hear the albacore was running?

A. The albacore was maybe all month already.

Q. As a matter of fact, that was a particularly unusual good month for albacore, wasn't it?

A. Well, I think so.

Q. When the fishermen catch albacore they don't deliver that to the fish dealers, do they; they deliver the albacore to the canneries?

A. Yes, that's right.

Q. So when the albacore starts running the fishermen forget all about the fish dealers?

A. Yes.

Q. And they go fishing for the albacore?

A. Yes.

Q. Why is that? Because albacore brings more money, isn't it?

A. Yes.

Q. And they are fishing for the cannery?

A. Yes.

Q. And, so, as a matter of fact, you were just one of many fishermen who during the strike went out of the fresh fish fishing and started fishing for the high-priced albacore for the canners, is that right?

A. Yes.

Q. And that June was in your memory a notable month because the albacore came early that June, didn't they?

A. That's right. [1038]

* * *

ALBERT J. DEUTER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. O'Malley:

Q. What business are you in, Mr. Deuter?

A. Ice business, ice delivery salesman.

Q. Were you engaged in that business?

A. With the Union Ice Company in San Pedro, California, in the wholesale end of it at the fish market wharf.

Q. Do you make deliveries to the fish dealers at the wharf at San Pedro?

A. Every day.

Q. How long have you been doing that, Mr. Deuter?

A. Twenty-two years.

Q. Directing your attention specifically to the 29th day of May of 1946 were you engaged in that business at that time?

A. I was.

Q. Do you know the defendant, F. R. Smith?

A. I do. [1042]

Q. I wonder if you can point to him here in the court room? Is he here?

A. The gentleman over there in the green shirt (indicating).

(The defendant Smith stood up.)

Q. (By Mr. O'Malley): Very well. On that date did you have a conversation with the defendant Smith?

A. I did.

Q. Where did that conversation take place?

(Testimony of Albert J. Deuther.)

A. At the end of the fish market wharf as I drove my truck down with the first load of ice for the day's work.

Q. In San Pedro? A. In San Pedro.

Q. And can you tell us what was said by you and what was said by the defendant Smith? Tell us in your own language what he said to you and what you said to him?

A. As near as I remember, Mr. Smith told me that he would go with me down the wharf to the different customers and see that I gave them the amount of ice that they had phoned in for me to take down to them, and after that there would be no more deliveries, that that would be all that I could deliver. [1043]

Q. Normally how much ice do you deliver to the fish dealers in San Pedro, during the month of June, on a daily basis?

A. Approximately 120 blocks, 125.

The Court: One hundred twenty what?

The Witness: Blocks of ice.

Q. (By Mr. O'Malley): Approximately what is the weight of that ice?

A. That would be about 21 tons; about 35,000, 38,000 pounds, somewhere along in there.

The Court: A day; daily.

Q. (By Mr. O'Malley): During the month of June did you thereafter make deliveries of ice to the fish dealers in San Pedro?

A. After the 1st of July. During June I made no deliveries, all during the month of June.

DONALD COLEGROVE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. O'Malley:

Q. Will you state your full name again?

A. Donald Colegrove.

Q. Do you live in San Pedro? A. Yes, sir.

Q. What company are you affiliated with?

A. The Union Ice Company.

Q. Union Ice Company?

A. Yes, that is right.

Q. What is your position or job with that company?

A. I am the route superintendent. [1045]

* * *

Q. In their plant at San Pedro?

A. The Harbor District.

Q. What is your work or your duties in the connection?

A. I take care of all delivery of ice, dispatch it, no matter where it goes, just the distribution of it.

Q. Does that include the distribution of ice to the fish dealers at San Pedro? A. Yes, sir.

Q. Now directing your attention specifically to the 28th day of May 1946, I ask you if you had a conversation with anybody with respect to the delivery of ice to the fish dealers in San Pedro.

A. Yes, I received a phone call—the gentleman,

(Testimony of Donald Colegrove.)

I don't remember his name, but he said he was an official of the Fishermen's Union.

Mr. Margolis: Just a moment. I object to any conversation at this point as not responsive.

Mr. O'Malley: Very well.

Q. Did you receive a telephone call?

A. Yes.

Q. What was said?

Mr. Margolis: Just a moment. I object to that as insufficient foundation; incompetent, irrelevant and immaterial.

Mr. Garrett: Same objection.

Mr. O'Malley: Your Honor, there is at issue here a conspiracy.

The Court: The objection is overruled.

Mr. O'Malley: Very well.

Will you tell us what was said?

A. He said he was an official of the Fishermen's Union and asked me to cooperate by refraining from my trucks to go into the fish markets during the strike, or during that period.

Q. Is that all that was said?

A. No. That is what he asked me, and I told him that our men belonged to the Teamsters Union and I would abide by their decision.

* * *

Q. Did you thereafter make deliveries to the fish dealers in San Pedro during the month of June?

A. No, just the one day; a part delivery on the 29th. [1047]

* * *

(Testimony of Donald Colegrove.)

Mr. Garrett: I move to strike the entire testimony of this witness on the ground it is not binding on any of the defendants.

Mr. O'Malley: Your Honor, there is at issue here a conspiracy. I think it is quite proper as circumstantial evidence.

The Court: The motion is denied.

* * *

Cross-Examination

By Mr. Margolis:

Q. In addition to delivering ice to your customers, that is, to the customers of Union Ice Company, that company sells ice to customers who come to the plant and pick up ice, is that correct?

A. Yes, sir.

Q. Do you have anything to do with the sale of ice to customers at the plant of the Union Ice Company?

A. Well, I don't actually do it myself, but I have charge of it.

Q. Are you familiar with all of the sales that are made?

A. Well, naturally; not every little sale that is made, no sir.

Q. Do you know whether or not during the month of June, 1946, any of the fish dealers from San Pedro to whom you [1048] had previously delivered ice came to the Union Ice Company and picked up ice?

(Testimony of Donald Colegrove.)

A. There were some trucks in there. I wouldn't say for sure they were from the San Pedro markets or not. There were very few, but there were some.

Q. There were some fish dealers' trucks in there, that is correct, isn't it? A. Yes.

Q. And they picked up ice? A. Yes.

Q. And that was during the month of June 1946?

A. Yes.

* * *

Redirect Examination

By Mr. O'Malley:

Q. Do you know whether or not those trucks were from the fish markets at San Pedro?

A. No, I don't.

Q. You don't know of your own knowledge?

A. No, I don't.

Mr. O'Malley: That is all.

The Court: How much ice did they pick up during the month of June?

The Witness: I really couldn't say because that was [1049] done on a cash basis. It was very little.

* * *

KNUD JORGENSEN,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: Knud Jorgensen.

The Clerk: Your address?

The Witness: 1380 Thirteenth Street, San Pedro.

(Testimony of Knud Jorgensen.)

Direct Examination

By Mr. O'Malley:

Q. What business are you in, Mr. Jorgensen?

A. In the cold storage business.

Q. Where are you engaged in that business?

A. 663 South Fries, Wilmington.

Q. What is the name of the company with which you are affiliated?

A. With the Union Ice and Storage Company.

Q. Do you have a position with that company?

A. Yes.

Q. What is that position?

A. Assistant manager.

Q. What is the nature of the business of the Union Ice Company? Could you just tell us very briefly and generally what services are provided by that company?

A. We sell ice and deliver ice to the fish markets and [1051] around town to the public and restaurants, and so on, and we also freeze fish.

Q. You also freeze fish?

A. Yes. That is the only type of cold storage facilities we have down there, fish freeze.

Q. Is that service available to the public generally? A. Yes.

Q. Do you provide that service to the public generally?

A. Yes, it is a public cold storage.

Q. That includes fish dealers and fishermen?

A. Anybody.

(Testimony of Knud Jorgensen.)

Q. Anybody who applies for the service?

A. Yes.

Q. Very well. Do you normally sell, in the course of your business, sell ice to the fish dealers in San Pedro? A. Yes.

Q. Directing your attention to the month of June, were there any sales made to the fish dealers in San Pedro? I refer to the month of June of 1946.

A. Yes, during the strike they had down there the fish dealers from San Diego and up north from Seattle, they shipped fish in to our plant, that was unloaded on the platform, and stayed there, we didn't touch it, we didn't handle it at all, it stayed there until the wholesale dealers themselves came and picked it up from our platform. [1052]

Q. Were they consigned to the fish dealers in San Pedro?

A. Consigned to the fish dealers in care of Union Ice and Storage Company.

Q. Where did those consignments originate, if you know?

A. We had quite a few shipments from the Star Fisheries in San Diego.

Q. Any others?

A. I believe a couple from the Union Fish Company in San Diego; and we had quite a few from Seattle, I don't know exactly who they were from in Seattle. We had Los Angeles-Seattle motor trucks, bringing fish in there.

(Testimony of Knud Jorgensen.)

Q. What happened with respect to those fish that were consigned to your place of business?

A. Well, they was unloaded on the platform, stayed there until the dealers came to pick them up, because I notified them.

Q. Can you tell us approximately what your normal volume of ice sales to fish dealers in San Pedro is during the month of June in a normal year?

A. I am awfully sorry, I can't tell you that. That is really out of my department. I only have to do with the cold storage. I can't tell you.

Mr. O'Malley: Your witness. [1053]

Cross Examination

By Mr. Margolis:

Q. Mr. Jorgensen, as I understand it, the Union Ice Company not only freezes but also stores fish that is frozen, is that right? A. Yes.

Q. What is the capacity of the Union Ice Company for freezing and storing fish at any one given time?

A. About 375 tons. That is the storage capacity. Freezing capacity per day is 20 tons.

* * *

Q. (By Mr. Margolis): You freeze 20 tons a day, you can store a total of 375 tons?

A. That's right.

Q. Is that storage capacity generally full?

A. Usually is, yes.

Q. Of course, when it is full, then, although anybody can come to you as a customer, if you haven't

(Testimony of Knud Jorgensen.)

any space you can't let them store fish there, is that right? A. That's right.

Q. And you can't freeze fish for them?

A. Correct. [1054]

Q. So a fisherman or fish dealer could come to you and store fish if and when you have storage capacity? A. That's right.

Q. If you don't have storage capacity, why, you can't accept it?

A. We turn quite a bit down right now.

Q. You have regular customers, do you not?

A. Yes, sir.

Q. Who are your regular customers that store fish with you?

A. Many customers is the wholesale dealers in San Pedro.

Q. Are those the fish dealers about whom you have been talking concerning the delivery of ice?

A. Yes.

Q. Those to whom you did not deliver ice during the month of June? A. Yes.

Q. Those are your main customers?

A. Yes.

Q. How much of that storage capacity of that approximately 375 tons do they take up?

A. I would say take up about 65 to 70 per cent.

Q. Who takes up the rest?

A. We have several dealers in Los Angeles.

Q. You have several dealers in Los Angeles?

A. Yes.

Q. Who else?

A. Several brokers in Los Angeles.

Q. Who else?

(Testimony of Knud Jorgensen.)

A. That is just about all.

Q. So, let's see if I have got it straight. Between the fish dealers in San Pedro, the fish dealers in Los Angeles, and the brokers in Los Angeles, your storage capacity is kept pretty well filled up all the time, is that right?

A. It is, yes.

* * *

Redirect Examination

By Mr. O'Malley:

Q. Mr. Jorgensen, do you select your customers, or do you determine them upon the basis of first come first serve?

A. We do first come first serve. We are not allowed to—it is a public cold storage.

Q. If anybody comes along and wants cold storage space and it is available, you make it available to them? [1056]

A. Yes.

Q. In the order in which they apply for that storage space?

A. Yes.

* * *

Recross Examination

By Mr. Margolis:

Q. As far as what has happened in the past is concerned, you have done practically no storage of fish for fishermen, isn't that right?

A. That's right. We did a few times, but, maybe,—I would say about one per cent—one-tenth of one per cent.

Q. Just a few pounds?

A. Just a few pounds.

Q. That a fisherman will bring in?

(Testimony of Knud Jorgensen.)

A. That's right.

Mr. Margolis: That is all.

The Court: Have they ever come to you with fish when you didn't have space for them?

The Witness: That did happen.

The Court: When?

The Witness: That happened—a long time ago, about [1057] six, seven years ago.

The Court: Six or seven years ago?

The Witness: Yes. They couldn't sell it on the market, and they would come in and ask us if we could store the fish.

The Court: It has not happened in the last six or seven years?

The Witness: No. [1058]

Q. (By Mr. Margolis): Now actually the more fish that comes in at any given time, the more your storage capacity is filled, is that correct?

A. Yes.

Q. When the fish dealers down at the wharf buy a lot of fish at one time, then they come to your place and store that fish and your fish capacity is filled up, is that right? A. That is right.

Q. This occasion that you remember six or seven years ago, when there was an exceptionally large run of barracuda, isn't it a fact that this is what happened: that first of all the fish dealers came in and brought in a lot of barracuda, filled up your storage space capacity, and then later on when some of the fishermen came and tried to get storage space they couldn't get it, is that right?

A. That is right. [1059]

R. R. RIPLEY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation, Mr. Ripley?

A. Superintendent of the Railway Express Agency at Los Angeles.

Q. What is your place of business?

A. 357 Aliso Street.

Q. Down here at the Union Station?

A. Correct.

Q. What are your duties as superintendent of the Railway Express Agency in Los Angeles?

A. Well, as superintendent of the Railway Express Agency I have a division which in addition to including Los Angeles, includes what might be termed the metropolitan area, San Pedro and Long Beach and Pasadena, Van Nuys—

The Court: Santa Monica?

The Witness: Yes, sir.

The Court: Redondo?

The Witness: Yes, sir.

The Court: Generally Los Angeles County?

The Witness: It is. It comprises most of the county.

Q. (By Mr. Schwartz): What type of express shipments is included in your [1061] duties as superintendent?

(Testimony of R. R. Ripley.)

A. Well, I have jurisdiction over the movement of all classes of express. We handle practically every commodity that moves in transportation, which would be dry freight, perishables and money—all classifications of transportation.

Q. Just to fix the issue on the command of this division of the Railway Express Agency, do you have a superior over you? A. I have.

Q. What is his title?

A. General manager.

Q. Who is immediately under the general manager?

A. As far as the Los Angeles Division is concerned, I am.

Q. Mr. Ripley, in the course and scope of your duties as superintendent—strike that.

How long have you been with the Railway Express Agency? A. Twenty-one years.

Q. How long have you been superintendent of this division? A. Since April, 1943.

Q. Since April, 1943, and in the course and scope of your duties as superintendent, has it come to your attention that certain shipments of fish, either frozen or iced, have [1062] been brought in and out of the port of San Pedro? A. Yes, sir.

Q. Was that true up to and including the month of May, 1946? A. Yes, sir.

* * *

Q. In the course and scope of your duties as superintendent of the Los Angeles division, is it the

(Testimony of R. R. Ripley.)

custom or the [1063] duties of the people who serve below you to report to you from time to time anything that occurs with reference to shipments handled by your company?

A. Well, they are expected to keep my office informed of any exceptions or irregularities in the service.

Q. Now were there any irregularities brought to your attention on or about May 29, 1946?

A. Yes. [1064]

* * *

The Court: How were these irregularities brought to our attention? Was it something you saw?

The Witness: Through a telephone report from our agent at San Pedro.

The Court: From your agent at San Pedro?

The Witness: Yes, sir.

Q. (By Mr. Schwartz): Was that in the regular course and scope of the agent's duties?

A. Yes, sir. [1065]

* * *

Q. Mr. Ripley, did you have occasion to go to San Pedro during the latter part of May, 1946, or early June? A. I did.

Q. Will you state what happened at San Pedro—strike that.

Do you recall the date, as near as you can remember, when that was?

A. Approximately May 29, 1946.

(Testimony of R. R. Ripley.)

Q. Now will you state what you observed—strike that.

Was that at the fish terminal?

A. The fish terminal is at San Pedro; yes, sir.

Q. Is that where you went on or about May 29, 1946? A. Yes, sir.

Q. Now will you state what you saw there?

A. I observed a picket line around the fish wharf, the [1066] location at which we deliver every day except Sunday quite a volume of fish and pick up from the same location quite a large volume of fish, which is forwarded to various destinations.

Q. Inside and outside of California?

A. Yes, sir.

* * *

Q. You say you saw a picket line. Will you describe what you saw rather than just labeling it?

Mr. Margolis: Objected to as incompetent, irrelevant and immaterial. [1067]

The Court: Overruled. And the objection may go to this entire line of testimony.

Mr. Anderson: Of course it is understood our running objection goes to this also, your Honor.

Mr. Margolis: My point was, in addition to our general objection, as we understand, which runs to this entire line of testimony, that the details of it are in any event immaterial unless it is for the purpose of identifying some person who was on the picket line.

(Testimony of R. R. Ripley.)

The Court: The objection is overruled. The objection is understood to have been made to each and every question with the same ruling on this line of questioning.

* * *

The Witness: The picket line consisted of quite a few men, and if I may be permitted to estimate the number I will do so, and I would say eight or ten men, who were at one end of the wharf, and some of which were indicated to me as being pickets. [1068]

* * *

Mr. Andersen: Move that that be stricken as hearsay, your Honor.

The Court: How were they indicated to you? Did you see them?

The Witness: If I remember correctly, some of the men were wearing bands indicating their membership.

The Court: Motion denied. Go ahead.

The Witness: And upon inquiry of the pickets I asked who was the head picket, and I was told that the head picket was a man by the name of Smitty.

I then found Smitty and we had a very pleasant conversation, the substance of which was to the effect that they did not want our trucks to cross their picket line.

* * *

Q. (By Mr. Schwartz): Do you see him in the courtroom?

(Testimony of R. R. Ripley.)

A. I think that is that gentleman right over there. I am not sure.

Mr. Schwartz: May the record show that the witness identified the defendant F. R. Smith?

Q. Proceed.

A. I explained to Smitty—I will call him that not knowing his other name—that we had quite a volume of fish in transit which had already left the shipping points and which we were obligated to make delivery to these receivers. [1069]

He agreed to permit the fish which were then in transit to be made delivery by our own vehicles to the receivers at San Pedro. However, they would not permit us to pick up outbound shipments from these shipper.

* * *

Q. Now thereafter did you again contact or have a conversation with this man Smitty, whom you identified, or any other person connected with this organization, Local 36?

A. A few days after I again called at the picket line [1070] and was informed at that time that——

* * *

A. That if we proceeded beyond what we had agreed to, that is, that we would deliver only the traffic then en route and not pick up outbound shipments, that our own office in San Pedro would be picketed. [1071]

Q. Now, what happened after that in so far as the shipments of fish to and from the landward side

(Testimony of R. R. Ripley.)

of the dock at San Pedro is concerned, with reference to your company?

* * *

The Court: I think the time should be fixed. You say "after that."

Q. (By Mr. Schwartz): Immediately after the second conversation.

A. As far as the shipments are concerned, we proceeded to deliver the received shipments as long as they moved.

Q. As long as they what?

A. As long as they moved. However, we discontinued picking up outbound shipments and the fish dealers delivered what shipments they had to our office in San Pedro with their own trucks.

Q. How long did that situation obtain?

A. That situation obtained, as I recall, during the duration of the strike, until such time as the strike was discontinued. [1072]

* * *

Q. (By Mr. Schwartz): Mr. Ripley, following your conversation with Smitty, or defendant F. R. Smith whom your identified—and we will make this that first conversation,—did you thereafter send any information to your agents in points outside of Los Angeles with regard to the acceptance of fish shipments? A. I did. [1073]

* * *

Q. (By Mr. Schwartz): Do you have copies of the wires that you sent out?

A. Yes, sir.

(Testimony of R. R. Ripley.)

Q. Do you have them with you?

A. Yes, sir.

Q. May I see them, please?

A. (The witness handed some documents to counsel.)

* * *

The Court: Yes, it may so show.

(A number of documents were marked for identification Government's Exhibits 15, 16, 17, and 18.) [1074]

* * *

(The documents referred to were received in evidence and marked Government's Exhibits 15, 16, 17, 18 and 19, inclusive.)

Mr. Schwartz: I would like to read Government's Exhibit 15 to the jury. [1079]

* * *

Will you stipulate that these are identical telegrams?

Mr. Margolis: Yes. They are all identical except for the address to which they go.

Mr. Schwartz: The same telegram, according to Exhibit 16, was sent to Mr. C. M. Hall, Superintendent, Railway Express Agency, Inc., San Francisco, California.

By Exhibit 17 to Mr. C. I. Fitzgerald, Superintendent, Railway Express Agency, Inc., Seattle, Washington.

And by Exhibit 18 to Mr. F. C. Rokey, Superintendent, Railway Express Agency, Inc., Sacramento, California.

(Testimony of R. R. Ripley.)

I should like to read Government's Exhibit 19.

* * *

Cross-Examination

By Mr. Margolis:

Q. Mr. Ripley, I believe you testified that your first conversation with Mr. Smith, whom you have identified as one of the defendants, was on the 29th day of May, 1946, is that right?

A. I think I said on or about the 29th day of May.

Q. It was before the first of June?

A. I think so, although I am positive.

Q. Is there any particular which fixes the date in your mind?

A. The date of these telegrams—the telegrams were sent following my conversation with Mr. Smith, if I remember correctly.

Q. They were sent on the same day?

A. I say they were sent following my conversation with Mr. Smith, and I can't say positively the exact date that I did talk to Mr. Smith, but it was at the inception of the strike down there.

Q. Then if the telegrams, as they appear to be, are dated May 29th, 1946, then it would be at least your testimony [1083] that you talked to him either on May 29th or before May 29th?

A. That is my recollection, although I am not positive about the date.

Q. Now, in that conversation with Mr. Smith, you said to him, did you not, that if the fish were not delivered—the fish that had already been

(Testimony of R. R. Ripley.)

ordered and were on the way—were not delivered, that that fish would be caused to spoil and would have to be thrown away, is that right?

A. That's right.

Q. And Mr. Smith replied to you that certainly neither he or anyone else involved wanted anything like that to happen, isn't that right?

A. That's right.

Q. And that, of course, there would be no objection whatsoever to the delivery of that fish, is that right?

A. That's right.

Q. In fact, that it would not be considered as a violation of any principle of respecting a picket line for the delivery of that fish to be made, because permission to cross the picket line would be given, is that right?

A. That referred to the fish that might be in transit at that time, that's right?

Q. That's right. And did you not tell Mr. Smith at that time that it was the policy of the company to respect picket lines in all disputes of this kind?

A. At this time I do not recall my exact conversation with Mr. Smith. It was to the effect, however, that we did—I am referring now to our drivers—attempt to cross picket lines providing there wasn't a threat of violence or a threat of picketing our own premises.

Q. I see. If there was no threat of picketing that you did attempt to cross picket lines, is that right?

A. No threat of violence—did you say picketing?

(Testimony of R. R. Ripley.)

Q. Violence or picketing, did you say?

A. That's right.

Q. Mr. Smith made no threat of violence, did he?

A. No, he made no threat of violence, but, however, he stated that he did not want our drivers to cross the picket line in picking up outbound shipments from their places of business, and the delivery of shipments that might be moved after those that were presently in transit.

Q. Then you suggested to Mr. Smith, did you not, that if he or the union did not want your concern to pick up fish at the dealers, that a letter be sent to your company so stating, isn't that right?

A. No, I don't recall that.

Q. You don't recall any such suggestion?

A. No, not asking that a letter be sent.

Q. Would you say that you did not say that?

A. I don't recall that I did; and it isn't customary for us to ask the union representatives to send us letters to that effect. [1085]

Q. Well, did you say to him that if such a letter was sent that then following your usual custom no further fish would be accepted at the places of business referred to?

A. I recall no conversation pertaining to letters with Mr. Smith.

Q. In any event, you sent the wires giving instructions to the various persons as indicated by Government's Exhibits 15, 16, 17 and 18, being

(Testimony of R. R. Ripley.)

the telegrams that you have produced, before you received any letter from Mr. Smith, isn't that so?

A. I don't recall the date of the letter. It is introduced as an exhibit, I believe. What is the date of their letter?

Q. The date of the letter appears to be May 31, and I notice that written in pencil on there are the words and letters: "Received 5/31/46, 11:50 a.m.?"

A. That is right.

Q. Isn't that an indication that this letter from Mr. Smith was received by your company on May 31, 1946, the date which the letter bears?

A. That is right.

Q. And the letter is in evidence as Government's Exhibit 19; that is right, isn't it?

A. That is right.

Q. And the telegrams which I have previously referred [1086] to, 15, 16, 17 and 18, were sent on May 29, 1946? A. Correct.

Q. Before you received the letter from the union? A. That is right.

Q. And the purpose of sending those telegrams was to give instructions as indicated therein and to state the facts upon the basis upon which those instructions were being given, is that right?

A. The telegrams are self-explanatory. They indicate that they were sent at the consent of the consignees after I talked to the fisher dealers at San Pedro.

Q. When you talked to Mr. Smith on May 29, you told him, did you not, that you thought that

(Testimony of R. R. Ripley.)

the union in saying that it would raise no objection to the delivery of fish in transit was being very fair? A. I did.

Q. And you thought the manner in which the whole transaction was being handled was fair and reasonable upon the basis of your past experience, is that right?

A. Well, it was fair to permit us to make delivery of the transffic in transit, but I didn't go along with their refusal to permit us to pick up outbound shipments from the fish dealers.

Q. Did you discuss that with him?

A. I did. [1087]

Q. What was said about that?

A. They objected to us picking up outbound shipments.

Q. He objected? A. Yes, sir; Mr. Smith.

Q. And you said nothing about that, is that right?

A. I said nothing to Mr. Smith about it.

Q. Yes.

A. I remember correctly, I tried to persuade him to permit us to cross the picket lines with our trucks to pick up these outbound shipments because our trucks were going through the picket line for the delivery of traffic that was in transit, and I pointed out that as long as our trucks were there and their fish was in the refrigerator boxes ready to be packed, that we ought to be permitted to pick up the outbound traffic. However, that was not agreed to.

(Testimony of R. R. Ripley.)

Q. You asked him if he would give you permission to do that, is that right? A. Yes, sir.

Q. Now, I think you stated in some part of your testimony that during the month of June 1946 you did not, aside from the fish that was in transit at the beginning of that month, deliver any fish to the San Pedro dealers, is that right?

A. That is right.

Q. You did deliver fish to other dealers in Los Angeles [1088] County?

A. Yes, we delivered fish to other dealers that might not be picketed.

Q. Was there any others picketed besides these?

A. Not to my recollection at this time.

Q. Now as a matter of fact, it is true, is it not, that customarily you receive fish for many, many dealers in Los Angeles aside from those on the San Pedro wharf?

* * *

The Witness: We do receive fish for many receivers in Los Angeles.

Q. (By Mr. Margolis): Do you know approximately how many?

A. I never checked it. I would say as a rough guess [1089] we probably receive fish in the whole city of Los Angeles for probably a hundred dealers.

* * *

Q. Isn't it your best judgment, your best estimate, that the number is considerably in excess of a hundred?

(Testimony of R. R. Ripley.)

A. I have never checked it. I wouldn't want to wager a guess on it. You are talking about people who receive fish by express?

Q. That is right.

A. There are many dealers that do not receive fish by express.

Q. But your best estimate at this time would be about a hundred?

A. Express receivers is approximately a hundred.

The Court: That includes restaurants, hotels and the like?

The Witness: No. He mentioned fish dealers.

The Court: Just the dealers?

The Witness: Fish dealers.

Q. (By Mr. Margolis): In addition, are there restaurants, [1090] hotels and the like who receive fish through your company? A. Yes, sir.

Q. About how many of them are there?

A. I wouldn't venture a guess on that.

Q. More than a hundred, would you say?

A. No, I wouldn't say that there is more than a hundred hotels and restaurants that receive fish by express. That is confined principally to the large hotels and the large restaurants. The smaller ones I presume get their fish locally.

Q. When you say "locally" you mean from the dealers, not the fishermen as a local source?

A. From the dealers; yes.

(Testimony of R. R. Ripley.)

Q. Isn't it true that of the total volume of incoming fish which you handle, a relatively small percentage comes into the dealers at the San Pedro wharf?

* * *

The Witness: Are you referring wholly to just inbound or outbound shipments or both?

Q. (By Mr. Margolis): I am referring just to inbound [1091] shipments.

A. I would estimate that on received traffic about 40 per cent of the fish goes to San Pedro dealers that we receive. [1092]

Q. That is handled through your company?

A. Handled through our company, yes.

Q. You have already testified that you handle fish shipped out of Los Angeles, as well as fish shipped into Los Angeles; that is true, isn't it?

A. That is right.

Q. Are there any other concerns or dealers who ship fish out of Los Angeles aside from the San Pedro dealers to whom we have referred?

A. Yes, sir.

Q. Do you have any basis for estimating whether more fish is shipped out of Los Angeles than is shipped into Los Angeles, or vice versa?

Mr. Schwartz. By the Railway Express Company?

Q. (By Mr. Margolis): You understand that all of my questions are directed to shipments by your company, the Railway Express Company?

(Testimony of R. R. Ripley.)

A. That's right. Well, I would say that the outbound movement slightly exceeds the inbound movement. [1093]

* * *

Q. (By Mr. Margolis): That is correct, isn't it, that San Pedro fish dealers are not the only concerns or dealers who ship fish out of Los Angeles?

A. Correct; yes, sir.

The Court: What percentage do they ship of the outbound?

The Witness: Well, I would say that on outbound traffic the San Pedro fish dealers forward about 60 per cent of the outbound traffic originating in Los Angeles.

The Court: All right.

Q. (By Mr. Margolis): During the month of June, 1946, aside from the San Pedro fish dealers concerning whom you have already testified, you continued to ship fish in and out of Los Angeles in accordance with your usual practice, is that not so? [1094]

A. That's right.

* * *

Q. Isn't it a fact that the total volume of incoming and outgoing fish during the month of June, 1946, handled by your concern was approximately the same as the total volume handled in other Junes, if you know?

A. I would like to be in a position to give you a definite answer to that, but I couldn't without referring to records. But to my recollection there

(Testimony of R. R. Ripley.)

was less fish in and out of Los Angeles—and I am talking about our terminal here—during the month of June during the fishermen's strike than there was other months when they weren't tied up in strike trouble.

Q. You couldn't be sure of that?

A. No, I can't, but it is my recollection, and that is the way you framed the question, I believe.

Q. Do you know how much fish came into Los Angeles during the month of June, 1946?

A. No, sir.

Q. Do you know how much fish went out of Los Angeles during the month of June, 1946? [1095]

A. No, sir.

Q. Do you know how much fish went into Los Angeles during the month of June, 1945?

A. No.

Q. How much fish went out of Los Angeles during the month of June, 1945? A. No, sir.

Q. Do you handle the dealers at Santa Monica?

A. The dealers at Santa Monica receive and forward some fish by express.

Q. Do you recall that during the month of June, 1946, the volume of fish which they handled, both receiving and shipping, increased pretty substantially?

A. No, I don't recall that there was any noticeable increase at Santa Monica.

Q. Do you remember that there was not?

A. Any noticeable increase, we would have observed it and it wasn't brought to my attention that

(Testimony of R. R. Ripley.)

there was any noticeable increase in or out of Santa Monica during the month of June.

Q. Would you say definitely that there was not?

A. I say any substantial increase, I might put it that way; if there would have been a small increase, it would have probably gone unnoticed, but any substantial increase would have required additional equipment and it would have been [1096] brought to my attention, I am quite sure.

* * *

Redirect Examination

By Mr. Schwartz:

Q. Mr. Ripley, did I understand you to say, in answer to one of Mr. Margolis' questions, that with regard to your trucks going through a picket line, that you would not ask your trucks to go through where there was a threat of violence?

A. That is right.

Q. Or a threat of picketing your establishment?

A. Yes, sir.

Q. You answered Mr. Margolis' question with regard to whether or not you considered this to be a fair way to handle the situation in regard to permission to handle the incoming shipments en route, is that correct?

A. Yes. [1097]

* * *

Q. (By Mr. Schwartz): In this conversation with Mr. Smith in which you stated that it was a fair way to handle the situation, was there any comment by you or Mr. Smith as to the fairness of the so-called union's position in this matter?

(Testimony of R. R. Ripley.)

A. I don't recall that I expressed any opinion as to the union's position as far as their grievances might be concerned in contributing to this strike. I did mention that I felt it was fair in permitting us to make delivery of the traffic that was en route, and I was rather disappointed that he wouldn't permit the outbound business to be picked up by our trucks. [1098]

* * *

Q. (By Mr. Schwartz): You were asked by Mr. Margolis to give an estimate or a guess as to the number of dealers in percentages of traffic; would your company's records show those figures as to the number of dealers involved or the amount of traffic involved?

A. For any given period our records would indicate to whom we delivered fish traffic and from whom we picked up fish traffic.

Q. And your company was served with a subpoena duces tecum for those records, was it not?

A. Yes, sir.

Q. And they were furnished to us?

A. Yes, sir. [1099]

* * *

EARL C. TIPPENS

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Voir dire

Mr. Schwartz: Now, if the Court please, at this time I would like to interrupt, if I may. I would like permission to excuse this witness for the time being.

* * *

Mr. Schwartz: I want to state to the Court that we arrived at a solution of this matter. We have agreed that they may go to the Railway Express Company offices and see these records, under which circumstances they will not object to these documents.

The Court: How about Mr. Garrett?

Mr. Garrett: If you will pardon me just a moment, I [1118] would like to confer with Mr. Andersen.

(Conference between defense counsel.)

Mr. Schwartz: I think if we do that we can shorten this matter.

Mr. Garrett: That is satisfactory.

The Court: All right. You may withdraw the witness.

You may be excused until called again by counsel.

(Witness temporarily excused.)

The Court: Next witness.

CLYDE M. BOSTON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Mr. Andersen: Mr. Schwartz, before you continue, is that Exhibit No. 20?

The Court: Yes. That was going from San Pedro. The one going to San Pedro will be given the next number.

* * *

Mr. Schwartz: I have it here. No. 20 is LCL fish traffic from San Pedro; and this is LCL fish traffic to San Pedro.

Mr. Andersen: No. 21 is to San Pedro?

The Clerk: Yes.

(The document referred to was marked Government's Exhibit No. 21 for identification.)

Direct Examination

By Mr. Schwartz:

Q. Mr. Boston, what is your business or occupation?

A. I am district accountant, Railway Express.

Q. What are your duties as district accountant for the Railway Express?

A. Well, I supervise the auditing of the accounts from the offices throughout the country, and which includes the records, delivery records, forwarding records.

Q. Of what area does your office take in territory?

(Testimony of Clyde M. Boston.)

A. It covers Southern California, Arizona and part of New Mexico. [1120]

Q. Now as district accountant, do you have under your custody and control any records of the Railway Express Agency?

A. Well, we have all the delivery records.

Q. You have what?

A. All the delivery records, delivery receipts.

Q. And what are those delivery records?

A. Well, it is a transcript of the receipt we issue for the shipment when it is offered to us, and that is the record of delivery which we call the delivery sheet.

Q. If a consignor of merchandise ships goods or fish from a point, let us say, in Seattle to a point San Pedro, California, what kind of record, if any, will your office have of that transaction?

A. We have what we call a delivery sheet which shows the point of origin and the date it was shipped, the shipper's name, the consignee, and description of the article, weight and charges, and the signature of the consignee.

Q. And are those delivery sheets filed in your office? A. They are.

Q. Are they kept there under your custody and control? A. They are.

Q. With reference to a consignment of goods or merchandise or fish from San Pedro to some other destination, will your office get a record of that transaction?

(Testimony of Clyde M. Boston.)

A. We get a copy of the receipt issued for that shipment, which carries similar information or about the same information as the delivery record. It is a carbon copy.

Q. How are those delivery sheets or slips filed? Will you describe the filing system?

A. First they are filed by the delivery—rather, I would say, according to the delivery office by—

Q. What is the delivery office?

A. The office that makes delivery of the shipment to the consignee.

Q. That is the point of destination?

A. Destination.

Q. All right.

A. And those records are arranged by a point of origin and in date order, forwarding date order.

* * *

Q. By. Mr. Schwartz: Do you have with you any sample copies of these slips about which you have just been testifying? A. Yes.

* * *

Mr. Schwartz: Will you mark these, please?

The Clerk: 22 and 23.

(The documents referred to were marked Government's Exhibits 22 and 23, for identification.)

Mr. Andersen: Are they one exhibit?

Mr. Schwartz: No; two exhibits, 22 and 23.

Q. (By Mr. Schwartz): I show you what has been marked for identification as Government's Exhibit 22, Mr. Boston, and will you tell us what that is?

(Testimony of Clyde M. Boston.)

A. That is a sample of delivery record on a shipment from Fresno, California, to Bell, California.

Q. And is that the kind of document that we would have with reference to a shipment—a consignment of fish, let us assume, from Seattle to San Pedro?

A. Similar to that. Or it might be on a white one. This means that charges were prepaid; and the white one, charges are to be collected from the consignee.

Q. Referring to this white one which you have just talked about, which has been marked as Government's Exhibit 23, for identification, will you tell us what that is?

A. That covers a shipment from Detroit to South Gate, California?

* * *

Q. (By Mr. Schwartz): Was that the kind of slip or document that would be employed for the purpose of a consignment [1124] of fish from San Pedro to some other point?

* * *

The Witness: No. If it was from San Pedro, going to the point he mentioned, it would be a form, I would say, identical to that.

The Court: Identical to that? That is to say, if it were sent collect?

The Witness: Sent collect, yes.

The Court: If it were sent prepaid it would be identical to Exhibit 22, is that right?

The Witness: That's right.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: We offer in evidence Government's Exhibits 22 and 23.

The Court: Admitted.

(The documents referred to were received in evidence as Government's Exhibits 22 and 23.)

Q. (By Mr. Schwartz): Mr. Boston, what would be entailed in the bringing to this court room of records showing the consignment of fish from San Pedro to points outside of the state of California from November 21, 1945, to and including June 30, 1946?

Mr. Andersen: May it please the court, I think that is kind of unnecessary. That is an improper question. I think the government has stipulated that we may have access to all of the records applicable to these exhibits.

Mr. Schwartz: That is right.

Mr. Andersen: And we haven't requested them to be brought into court.

Mr. Schwartz: The purpose of the question, your Honor, was merely to demonstrate to the court and jury—

The Court: I think they are entitled to lay a foundation. I think they should lay a foundation as to why the originals are not here. Objection overruled.

Mr. Andersen: May it please the court, we are not urging the objection. The stipulation is that all of the background information will be made available to us.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: That is correct.

Mr. Andersen: And we are not going to object to the introduction of the compilation?

The Court: You are not? [1126]

Mr. Andersen: No.

The Court: Exhibits 20 and 21?

Mr. Schwartz: That is right. It was so stipulated, but I thought it might be well to have in the record the reason from the standpoint of business convenience of not bringing in the original records. If you will stipulate, Mr. Andersen——

Mr. Andersen: There is no sense in our stipulating if the government is going to make apologies for something.

Mr. Schwartz: We are not apologizing for anything.

Mr. Andersen: Then I submit the question is improper, your Honor.

The Court: The question is not improper, if you press for it, but if you are satisfied to introduce Exhibits 20 and 21, the compilations, in evidence, then there is no objection and they are in evidence. That is the only reason you have this witness here, to lay a foundation to get them into evidence.

Mr. Andersen: Yes, your Honor.

The Court: Do you offer Exhibits 20 and 21 in evidence?

Mr. Schwartz: I haven't yet.

The Court: Do you now?

Mr. Schwartz: Not yet, for the reason that I would like to show to the court and jury from what these were compiled. After that we have no objec-

(Testimony of Clyde M. Boston.)

tion to their going to the Railway Express Company and seeing the originals. [1127]

The Court: I see what you mean.

* * *

The Witness: You asked the question, what would be involved in producing the records?

Mr. Schwartz: That is right. [1128]

The Witness: From San Pedro or to San Pedro?

Mr. Schwartz: From San Pedro to points outside of the state of California.

The Witness: During what period?

Mr. Schwartz: November, 1945, through June, 1946.

The Court: I think what counsel is getting at, of what do those records consist.

The Witness: What I was thinking of there, your Honor, the outbound record is what we call a 9-year record, and for 1945 those copies would be destroyed.

Q. (By Mr. Schwartz): You said 9-year record?

A. Nine months—pardon me. Did I say 9 years?

Q. Yes.

A. I meant 9 months. We wouldn't have the outbound record.

Q. This is March, 1947. How far back to your records go that you have now?

A. About 9 months. That would be back to about——

The Court: That would be back 9 months.

The Witness: July.

(Testimony of Clyde M. Boston.)

Q. (By Mr. Schwartz): July, 1946?

A. Yes.

Mr. Andersen: I didn't understand that. From this point [1129] how far back do the records go?

The Court: They go back 9 months.

Mr. Andersen: From today?

The Court: Yes.

Q. (By Mr. Schwartz): Is that right?

A. Yes.

Q. What about the inbound?

A. Four years. We have those.

Q. So you have those? A. Yes.

The Court: When you compiled that statement there from November 21st, was that as far back as the outbound records went at that time? Do you know the date that you compiled those from?

The Witness: I believe the original request was for the period July, '45, to July, '46, and that compilation was made——

* * *

The Witness: That compilation was made during the latter part of July. And the record of the outbound shipments was tabulated back nine months.

* * *

Mr. Schwartz: Let me indicate here that Exhibit 21 [1130] goes from July, 1945, through June, 1946.

The Court: He said he has all those records, but I understood his testimony was that all the other records are destroyed beyond nine months back.

How much of a bulk is the records for one

(Testimony of Clyde M. Boston.)

month's shipments? Do you mix all the fish with everything else that originates from San Pedro?

The Witness: They are all together.

The Court: How much of a bulk is one month's records?

The Witness: One month's record consists of approximately 250 boxes of—I believe it is 18-inch boxes, each containing around 2500 delivery records.

The Court: 250 boxes a month approximately?

The Witness: Approximately.

Q. (By Mr. Schwartz): And those records that are available are at the office at 347 Aliso Street?

A. They are.

Q. And, Mr. Boston, if counsel for the defendants come to your office will you make those records available to them?

Mr. Andersen: What is the address?

Mr. Schwartz: I think it is 347 Aliso.

The Witness: No, 645 South San Pedro.

The Court: Where is the accounting office?

The Witness: 645 South San Pedro. [1131]

Q. (By Mr. Schwartz): Is that where your office is, Mr. Boston? A. Yes.

Q. And if Mr. Andersen or Mr. Kenny or any of the attorneys come to your office, will you make the records available to them? A. Yes.

* * *

Mr. Schwartz: We offer in evidence Exhibits 20 and 21.

Mr. Garrett: I would like to ask a question first on the offer of, I think it is No. 20.

The Court: Have you finished with this witness?

(Testimony of Clyde M. Boston.)

Mr. Schwartz: Yes, I have finished with him.

Cross-Examination

By Mr. Garrett:

Q. Is 20 the compilation of the outgoing shipments?

The Court: Yes, 20 is from San Pedro.

Mr. Garrett: I want to ask the witness whether this compilation, which is No. 20, for identification, goes, as I understand from November, 1945, through June, 1946.

The Court: It shows on the face of it.

Mr. Garrett: I beg your pardon?

The Court: It shows on the face of it. What does it show?

Mr. Garrett: It says: L.C.L. fish traffic from San Pedro, California, Railway Express Agency. And it starts in November, 1945, and runs to June, 1946.

Q. (By Mr. Garrett): Is that your understanding of this compilation?

A. There are some months in there that we didn't have the outbound record. For certain months those outbound records are distributed that we don't have.

Q. You mean months between November, '45, and June, '46?

A. November, '45—I believe March, '46, is one month, I believe.

The Court: March, '46, is missing?

The Witness: I think that is the one. About three or four months out of each year. [1133]

(Testimony of Clyde M. Boston.)

The Court: Why don't you look at that, counsel? I mean, it is there.

Mr. Garrett: He is right. There is just a nice blank sheet here for March, 1946, without anything on it.

The Court: Are there any other months missing there?

Mr. Garrett: Here are some entries for November and for December, January——

The Court: All right. Now, what do you want to ask the witness?

Mr. Garrett: To answer your question: some for February, none for March, some for April, some for May, some for June.

Q. (By Mr. Garrett): Are the delivery slips for March, 1946, not available in your office?

A. On the outbound shipments?

Q. On the outbound shipments.

A. No, they are not.

The Court: I understood his testimony that no delivery slips on the outbound shipments are available beyond nine months back from this date.

After you prepared that compilation you continued to disburse or destroy—what do you do with these records, destroy them?

The Witness: Destroy them.

The Court: As soon as they become nine months old. Whoever figured out this nine months business? [1134]

The Witness: Interstate Commerce Commission. That is the authorized period.

(Testimony of Clyde M. Boston.)

The Court: It sounds like more than one person had something to do with it.

Q. (By Mr. Garrett): I take it, then,—I am commencing to understand—that none of the delivery slips supporting any part of this compilation offered as Government's Exhibit No. 20 are available in your office now, is that the fact?

A. On the shipments moving from San Pedro?

Q. That's right.

A. We don't have any of those.

Q. They are all destroyed?

A. No; the delivery receipt would be at the destination point.

The Court: You don't destroy them?

The Witness: We don't destroy the delivery record.

Q. (By Mr. Garrett): But you destroy the only record you keep?

A. Of the forwarding record.

Q. You have no forwarding record on any of these shipments contained in Government's 20 in your office?

A. We have for nine months. [1135]

* * *

Mr. Andersen: May it please the court, I was going to make the same point that Mr. Garrett made when I heard the witness' explanation. As I understand it, with relation to Exhibit 20 offered in evidence, none of the supporting data is available, that is, the data from which Exhibit No. 20 was compiled. I understand that it is all destroyed.

(Testimony of Clyde M. Boston.)

Mr. Garrett: I didn't understand that at the time I entered into this stipulation, your Honor.

Mr. Andersen: If that is so, I will object to the introduction of Exhibit No. 20 in evidence, because in our discussion with Mr. Schwartz our discussion was based upon the premise that the supporting data was available. So if there are no records available to us so that we can check——

The Court: Do you have any more cross-examination from this witness?

Mr. Andersen: No. It is only on objection to Exhibit No. 20, that is all. We don't object to No. 21, your Honor.

Mr. Garrett: I will ask one more question.

Q. (By Mr. Garrett): Is it not a fact that none of the records in your office upon which this Exhibit No. 20, on the outgoing shipments from San Pedro,—that none of those records upon which Exhibit No. 20 is based are now available [1136] in your office?

A. Exhibit No. 20 was compiled from the copy of the delivery record, and we don't have those. But the delivery sheet itself is available at the destination point. For instance——

Q. Wherever the stuff went, all these different points where it went? A. Yes.

Mr. Garrett: I think it is clear now. I ask to be relieved of my stipulation, your Honor, as to this Exhibit 20. I made my stipulation with the understanding that I would have access to the source of the material.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: That was my information at the time, that they were available.

Mr. Andersen: It is not the fault of Mr. Schwartz. It was just a mistake of fact.

The Court: Have you any further questions of this witness?

* * *

Mr. Andersen: We were just objecting to this exhibit. I have no questions of him.

The Court: I want to get the witness on his way and get someone else here.

Mr. Schwartz: Yes, I have a question to ask this witness. [1137]

Redirect Examination

By Mr. Schwartz:

Q. On Exhibit 20 there appears on there two columns, net weight and gross weight; can you tell us what those refer to?

A. The net weight is the weight of the commodity itself, fish. The gross includes the ice, packing; 25 per cent in most cases is added for ice.

The Court: How much?

The Witness: 25 per cent in most tariffs.

Mr. Schwartz: That is all the questions I have of this witness.

The Court: The witness may be excused.

Mr. Andersen: I have a few questions, your Honor.

Mr. Garrett: Is No. 20 in evidence?

The Court: No, I haven't ruled on it yet.

(Testimony of Clyde M. Boston.)

Mr. Andersen: No. 21 has not been offered, then, in evidence?

Mr. Schwartz: I offered them both.

The Court: No. 21 is in evidence.

Mr. Andersen: Then I have a few questions.

The Court: 20 I will reserve ruling on.

Cross-Examination

By Mr. Andersen:

Q. I notice, Mr. Young, that on Exhibit 21 there are [1138] quite a few skips where no weight is shown. Is there any reason for that?

A. Well, I don't know, unless they weren't iced.

Q. Is that your only explanation of that?

A. Or it wasn't clear on the records.

Q. Maybe the writing on the tag would be illegible, or there would be no icing, or,—that is, no tare weight? A. That is right.

Q. That would be your only possible explanation of it, is that right? A. I would say so.

Q. Generally speaking, with respect to Exhibit No. 21, and I assume that you personally are familiar with this compilation, isn't that true?

A. It was done in my office. Of course, I didn't do the detail. [1139]

* * *

(Conference between counsel.)

The Court: Why don't we defer this conference to some recess period? We have the jury here and the witness. Let us [1141] move on to something else.

(Testimony of Clyde M. Boston.)

Mr. Boston, is it customary in the course of your regular business from time to time to make compilations such as Exhibit No. 21 or Exhibit 20 for identification?

The Witness: Not frequently; occasionally.

The Court: Occasionally?

The Witness: Yes.

The Court: It is done at the request of an outsider or some official of the company?

The Witness: An official of the company; yes.

The Court: Some official of the company?

The Witness: Yes. Usually through the office of the company to us.

The Court: Through the official of the company to you.

The Witness: Yes. This request I believe came through Mr. Ripley's office, the superintendent.

The Court: Did it come to you through Mr. Schwartz or Mr. Dixon or Mr. Rubin?

The Witness: I think the first information we got on it is through Mr. Ripley's office.

The Court: Did he give you a telephone instruction on it or a memorandum?

The Witness: That he would send up some men to draw off the data.

The Court: Did he send up some men to draw off the data? [1142]

The Witness: Yes.

The Court: You mean you didn't compile these by your own people?

(Testimony of Clyde M. Boston.)

The Witness: No, it was compiled by the employees at the local office, which is customary.

The Court: Employees of the local office?

The Witness: Yes.

The Court: Instead of employees of the central accounting office.

The Witness: That is right.

The Court: I see. All right.

Mr. Schwartz: I would like to ask one question here, if I may, on Exhibit 20.

When these people that were sent to the local office, were sent to the general accounting office, and came to make this compilation, were they under your custody and control and supervision while they were making that?

* * *

The Witness: They worked under my general supervision.

Mr. Schwartz: While they are in your general accounting [1143] office?

The Witness: That is right, while they are in that office.

The Court: And do you recall when this particular occasion, when these people were there making this compilation?

The Witness: Yes, I remember it very well.

Mr. Schwartz: Do you recall what records they used for the purpose of making this compilation?

The Witness: Yes.

Mr. Schwartz: And you say that some of those records are now destroyed?

The Witness: Yes.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: Is that correct?

The Witness: Yes.

Mr. Schwartz: We now renew our offer in evidence.

The Court: Apparently all of them are now destroyed.

Mr. Schwartz: No. Not Exhibit 21.

The Court: On Exhibit 20. On Exhibit 21 they are still here.

Mr. Schwartz: Let's ask him.

The Court: You asked him once and he says he has them for four years back.

Mr. Schwartz: Would the records for June, 1946, be in existence, by any chance?

The Witness: There are two different class of records. [1144]

Mr. Andersen: He said they are all destroyed.

Mr. Schwartz: I am interested in June 1946 at the moment.

Mr. Andersen: I am examining the witness. May I examine him? I will examine him on that point.

Mr. Schwartz: All right.

Q. (By Mr. Andersen): I understood from your testimony, Mr. Boston, that all of the records used for the compilation of Government's Exhibit No. 20 for identification, which I now hand you, have been destroyed, is that correct, sir?

A. From San Pedro?

Q. Yes.

The Court: Here is a calendar.

(Testimony of Clyde M. Boston.)

The Witness (examining document): That covers the period.

Q. (By Mr. Andersen): That goes back to May?

A. Nine months period would all be destroyed.

Q. They would all be destroyed?

A. That is the copy which is the outbound.

The Court: Would June be destroyed?

The Witness: June I guess would not be destroyed.

The Court: Do you destroy them at the end of the month or from day to day? [1145]

The Witness: No, at the end of the month.

The Court: At the end of the month?

The Witness: Yes. It is authorized nine months record, and then they can be destroyed any time. I can't say right offhand just which last month has been destroyed but they are due to be destroyed or we have authority to destroy them at the end of the nine months period.

Mr. Schwartz: In addition to our offer of the document in evidence, we will still stipulate that they can see June if it is still in existence.

The Court: Will you issue an order when you return to your office this afternoon that whatever records you have on this in so far as San Pedro origination shipments are concerned, be not destroyed until further order of the Court?

The Witness: I would be glad to do that.

The Court: So that if they are available then you can have them for June.

(Testimony of Clyde M. Boston.)

Mr. Andersen: I assume that your Honor's ruling on the objection will be reserved?

The Court: Yes, I will reserve the ruling.

Any more questions?

Mr. Andersen: Just a few more, your Honor.

The Court: All right.

Q. (By Mr. Andersen): I assume, so far as the destruction of records is [1146] concerned and this time period, that would apply to all of the other ports in this area, is that correct?

A. Nine months on the forwarding records, and four years on the delivery records. That would apply to all points.

Q. Do you have available in your records the figures showing shipments to other fish dealers in this area, that is, others than the ones on the Muni dock in San Pedro? You have all those available?

A. Consigned to other dealers in San Pedro?

Q. In the county, in Los Angeles.

A. Yes, we would have those, the delivery records.

Q. And the same rule would apply there as to the nine months and the four years, is that correct?

A. That is right.

* * *

Q. In other words, this document does not purport to be a compilation of all fish coming into the area but just limited to the small area shown on the exhibit, is that correct? [1147]

The Court: Is it limited to San Pedro or to your whole division office?

(Testimony of Clyde M. Boston.)

The Witness: It is limited to San Pedro. It says "to San Pedro."

Q. (By Mr. Andersen): You would have the other records available, that is, other incoming records? A. Yes.

Mr. Andersen: And I assume that those records would be available to us also pursuant to the general stipulation, may it please the Court.

Mr. Schwartz: No, because they have nothing to do with the charge in this case, if the Court please, as to what shipments, if any, made by dealers in Fresno, California, or in Newport Beach, or anywhere else.

Mr. Andersen: May it please the Court, that may be the Government's theory of the case, but they are introducing this evidence for the purpose of commerce, and I believe that we can show from the evidence, which is undoubtedly available, that there was no diminution of the flow of commerce at all. That would be the purpose for which we would want to use the evidence.

I think if there is evidence available which is or may be competent, that the Government in all fairness should stipulate that that evidence may be made available to us. [1148]

Mr. Garrett: I join in the statement of counsel.

Mr. Schwartz: In the area of fishing that is material. It is the area limited to the charge in the indictment. That refers to the fishing area and to the ports involved.

(Testimony of Clyde M. Boston.)

Mr. Andersen: I assume that the stipulation is broad enough to permit us to inspect the records of the company represented by this witness. [1149]

The Court: He says it is not.

* * *

Mr. Andersen: Then if the stipulation is not intended to be broad enough so that we may inspect the records of this witness to the extent that we deem necessary for a proper defense of the people before the court, then we ask to be relieved of the stipulation, may it please the court. In all fairness we think that we should be able to show that commerce or traffic in fish was in no wise affected at all.

The Court: You are entitled to have the records; you are entitled to the processes of the court to secure them. This witness has testified only concerning the shipments in and out of San Pedro, and the records only relate to the shipments in and out of San Pedro.

I do not think that that opens the door, in so far as cross-examination is concerned, to go into the whole matter of the amount of fish that is shipped in or out of the entire portion of Southern California.

If you deem it necessary or advisable you may have the processes of the court to secure such evidence from this or any other witness that you deem necessary to secure for your case. There is no ruling for me to make. If you wish to be excused from your stipulation, that is not my concern because [1150] I never approved the stipulation.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: I would like to say here, your Honor, that it wasn't stipulated that anything but San Pedro was involved because that is what we were talking about, but I am quite agreeable that he may see the records, if they want to show them to him, of Santa Monica or San Diego or any of the fishing ports involved in the charge. But I am not concerned with Fresno or Bakersfield——

Mr. Andersen: Nor am I. We are only concerned with Los Angeles County, your Honor.

Mr. Schwartz: That is not in the charge. We are talking about San Pedro in Los Angeles County, and Newport Beach, in whatever county that is in, or Santa Monica. And as to those, if you want to see those records and they want to show them to you, it is perfectly all right.

The Court: We are getting no place very fast. You withdraw from the stipulation?

* * *

Mr. Andersen: Yes, your Honor. [1151]

* * *

The Court: And you do not?

Mr. Schwartz: No.

The Court: If you cannot agree, you may withdraw from the stipulation.

* * *

Mr. Andersen: Then I assume that Exhibit 21 is not in evidence as of this moment?

The Court: You withdrew from your stipulation, and do you wish to move to strike it or object to it?

(Testimony of Clyde M. Boston.)

Mr. Andersen: Yes, your Honor.

The Court: State the grounds of your motion.

Mr. Andersen: I move to have the court strike its order admitting Exhibit No. 21 into evidence on the grounds heretofore stated before the recess.

The Court: On the ground that there is no foundation?

Mr. Andersen: Yes, your Honor. [1152]

The Court: I will grant your motion and reserve ruling on the government's motion to admit Exhibit 21 in evidence.

Have you any other questions of this witness?

Mr. Andersen: That is all at this time.

The Court: Do you have any further questions of this witness?

Mr. Schwartz: I am not clear whether the record is clear at this time as to whether the foundation evidence which we adduced from this witness applies to Exhibit 21, which we assumed was in evidence. If that is the record, I am willing to let it go. [1153]

* * *

The Court: Mr. Boston, on this Exhibit 20, for identification, there are several columns headed: Shipper, Date, Commodity, Net Weight, Gross Weight, Charges, and Designation; do you from time to time make up a report for the official or fiscal purposes of your company, in the regular course of business, showing the shipment of all commodities from, let us say, San Pedro, under these headings?

The Witness: No, sir.

(Testimony of Clyde M. Boston.)

The Court: Do you make up any kind of a monthly report showing the destination, shipper, the commodities, the gross weight, or charges——

The Witness: Only on specific request.

The Court: Only on specific request?

The Witness: Yes.

The Court: Do you make up any report showing, from your [1155] points of origin, points of destination, the total quantity of merchandise shipped from, say, San Pedro to Washington, D. C., or some other point in the United States—do you make up any form?

The Witness: No regular report.

The Court: What kind of report do you make regularly, monthly?

Mr. Andersen: That assumes that there is one, your Honor.

The Court: Do you make some?

The Witness: A report of traffic handled?

The Court: Yes.

The Witness: Not in our office.

The Court: You don't make it up?

The Witness: That is usually made up in the other offices.

The Court: Made up in the local offices?

The Witness: Yes.

The Court: That is to say, in San Pedro they would have a report of traffic handled, would they?

The Witness: I don't know just what reports they make. I don't think there is any regular report in that form, only on specific requests.

(Testimony of Clyde M. Boston.)

The Court: Well, is there any kind of report—what I am getting at is, does your company in your accounting system [1156] require some kind of a monthly report from each of the shipping offices of the freight or express originating from that point during that month?

The Witness: No, we do not. Just the number of shipments. There is a report of the number of shipments, regardless of the commodity.

The Court: Nothing concerning the commodity or the destination or the weight?

The Witness: No, sir.

The Court: All right. You had some other questions?

Mr. Schwartz: Yes.

Redirect Examination

By Mr. Schwartz:

Q. Mr. Boston, some time in July or thereabouts of 1946 was there a compilation made at your office concerning less than carload fish traffic to San Pedro from points outside of the State of California? A. To San Pedro?

Q. Yes, from points outside of the State of California.

A. We made that tabulation there.

* * *

Q. (By Mr. Schwartz): By whom was the compilation made?

A. It was made in my office by employees from the local [1157] office, the Aliso Street office.

(Testimony of Clyde M. Boston.)

Q. And while those employees were in your office making this compilation were they under your direction and control? A. That's right.

* * *

Q. (By Mr. Schwartz): I show you Government's Exhibit No. 21, for identification, and ask you whether that is a compilation which was made in your office as you just testified?

* * *

A. This is the report that was compiled from information obtained in my office.

Mr. Schwartz: We now offer in evidence Government's Exhibit 21, your Honor. [1158]

* * *

Recross-Examination

By Mr. Garrett:

Q. Mr. Boston, will you tell me just what you did to direct the persons who were making this compilation, which is Government's Exhibit 20, in performing that work, if anything?

A. I had an employee by the name of Bullard who had charge of that compilation.

Q. Who were the men who actually made it from the Aliso Street office?

A. I don't know their names.

Q. Had you ever seen them before?

A. Different ones came over there from the local office. Directly under Mr. Bullard.

The Court: Is Bullard in your office?

The Witness: Yes, sir.

Q. (By Mr. Garrett): Did you ever have occasion to give any instructions to any of these men

(Testimony of Clyde M. Boston.)

who were actually doing the work, the ones who were over from the Aliso Street office?

A. Instructions as to what information was desired was given to Mr. Bullard by Mr. Ripley's office, I believe. That is where the request came from.

Q. And you didn't, therefore, actually have any occasion to give any instructions to Mr. Bullard in connection with the work, because he got them from Ripley's office, is that right? [1159]

A. The request came through his office; he was told what information was desired.

Q. It was from Ripley's office to Bullard, is that right? A. That's right.

Q. And the men who were actually performing the work, you didn't have any occasion to give them any instructions either?

A. Not individually, no.

Q. You haven't got yourself a copy of that compilation, have you? A. No, I haven't.

Q. It wasn't delivered to you when it was completed, but it was delivered to Mr. Ripley's office, is that right?

A. Mr. Ripley's office, yes; not to me.

Q. You wouldn't know, then, why there aren't any figures for March, 1946, in the compilation, would you?

A. Of the outgoing movement? March, '46, on the outbound?

Q. That's right.

(Testimony of Clyde M. Boston.)

A. Yes, those records weren't available. That is one month the outbound records weren't available.

The Court: Do you know why they wouldn't be available for that month? Did they get lost?

The Witness: No; they are distributed to various [1160] destinations for accounting purposes.

The Court: To other places?

The Witness: Yes.

Mr. Garrett: No further questions, if your Honor please.

The Court: Has anybody got any other questions of this witness?

Mr. Schwartz: No further questions.

The Court: You may be excused.

Mr. Garrett: Objected to; no proper foundation laid.

The Court: What is the offer now?

Mr. Schwartz: The offer in evidence was as to 21.

Mr. Garrett: On the testimony of this witness.

The Court: The objections are overruled, both 20 and 21 are admitted in evidence.

Mr. Garrett: There has been no offer of 20.

The Court: He offered that exactly 25 minutes of three, which is 30 minutes ago.

Mr. Andersen: May it please the court, do I understand with respect to Exhibit No.—

The Court: I have admitted both documents in evidence.

Mr. Andersen: I was just wondering if your Honor had overlooked the fact that the supporting data had been destroyed.

The Court: I have not. I am perfectly aware of what [1161] the witnesses have testified to. Both documents are admitted in evidence. Call the next witness.

Mr. Andersen: May it please the court, then, we would like, further, to examine Mr. Boston in relation to No. 20.

The Court: Counsel, Mr. Boston has gone. You had your opportunity, he was here, the offer was made, I asked repeatedly if anybody had any other questions, and just now I waited fully 30 seconds, a half minute, and looked at everybody and asked if anybody had any questions of Mr. Boston, and they had not.

Mr. Andersen: That is correct.

The Court: If you want Mr. Boston for any other questions, why, processes are available to you.

Mr. Andersen: Your Honor stated that he was going to have Mr. Boston inquire if those records were available, and I understood your Honor was going to reserve ruling until you determined whether the nine months records were available, and it was on that basis that we——

The Court: On whether or not June was available.

Mr. Andersen: Yes, of No. 20, and——

The Court: I have now admitted 20 and 21 in evidence, counsel. [1162]

DONALD H. ROBERTS

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Donald H. Roberts.

The Clerk: Your address?

The Witness: 10777 Richland Avenue, Los Angeles.

Direct Examination

By Mr. Schwartz:

Q. You are Mr. Roberts? A. Yes, sir.

Q. What is your business or occupation?

A. Vice-president of the West Coast Fast Freight.

Q. And what is your position with that company?

A. Well, I am vice-president and one of the owners.

Q. What do you do as vice-president?

A. All the duties that an owner of a business would do; see that it runs, operates.

Q. What is the nature of the business of the West Coast Fast Freight Company?

A. Common carrier interstate by motor truck.

Q. Does your company handle shipments from points in the State of Washington to points in the State of California? A. Yes, sir.

Q. And that is handled by—— [1163]

A. By motor truck.

(Testimony of Donald H. Roberts.)

Q. Mr. Roberts, were you requested to make a compilation of fish shipments from Seattle and Washington points to Los Angeles and San Diego points for the period July 1, 1945, to July 1, 1946?

A. I was.

Q. And was such a compilation made?

A. Yes.

Q. Are the records from which the compilation was made still in existence? A. Yes.

Q. And they are at your office? A. Yes.

Q. Where is that office?

A. Porter Street in Los Angeles; 2474 Porter Street. [1164]

* * *

Mr. Schwartz: Yes. May we have this marked, please?

The Clerk: No. 24.

(The document referred to was marked Government's Exhibit No. 24 for identification.)

* * *

Q. (By Mr. Schwartz): Mr. Roberts, I show you what has been marked as Government's Exhibit 24, and ask you whether that document is [1166] a compilation that was made pursuant to request by members of the Department of Justice.

A. It is.

Q. Will you state the circumstances under which that document was compiled?

A. I think it was in reply first to a phone call—I don't know whether it was later confirmed in

(Testimony of Donald H. Roberts.)

writing for sure or not—but I compiled these figures and had them made up for you. I think you wanted them in a short period of time at that time, so I had the office go through all of the freight bills for the dates involved and list each and every shipment as indicated here, each shipment individually.

Q. Were the people who made up that document under your control and supervision?

A. Not directly. The office manager appointed the clerk to pull the bills and do the typing.

Q. Can you describe the records and documents from which this compilation was made, referring to Exhibit 24 for identification?

A. They are taken directly from freight bills.

Q. Will you describe them, their bulk, their size, their weight?

A. You mean describe the shipments?

Q. No, the record.

A. There is for each shipment that is moved under a [1167] bill of lading issued by a shipper a freight bill cut. The freight bill is about 5x8½, on a piece of paper, describing who the shipper is, who the consignee is, describing the merchandise, the rate, the weight and the total charges, collect or prepaid. And for every shipment tendered and accepted and delivered there is a freight bill so cut. The freight bills are numbered. They start with 1, with the inception of a company, or some low number, and go through numerically in order until you get up to 700 or a thousand, at which time you might start a new series of numbers. [1168]

(Testimony of Donald H. Roberts.)

Q. Are the freight bills filed according to destination points or points of origin?

A. Our freight bills are all filed strictly only in freight bill sequence number, numerical sequence is the only way in which we file.

Q. About how many such freight bills would you have in the course of a month?

A. In a month? 3,000.

* * *

Q. (By Mr. Schwartz): From points in Seattle and Washington to points in Los Angeles and San Diego? A. Yes.

Q. About 3,000 a month? A. Yes.

Q. What kind of commodities——

The Court: Just a minute. That is southbound from points north of here?

The Witness: Yes. [1169]

The Court: And not southbound from points south of here?

The Witness: No.

Q. (By Mr. Schwartz): What kind of commodities—— A. General commodities.

Q. And is there any tabulation or recording pertaining to different kinds of commodities, or are they all mixed?

A. We maintain no statistics as to types of shipments.

Mr. Schwartz: We offer in evidence Government's Exhibit No. 24, your Honor, limiting the offer to the destination points marked in this ex-

(Testimony of Donald H. Roberts.)

hibit as San Pedro, San Diego, Santa Monica, and generally any other ports mentioned in the indictment.

The Court: Let me see the exhibit.

Mr. Garrett: I would like to ask some questions on the foundation, your Honor.

The Court: These are all from the State of Washington, is that right?

The Witness: I think that is all from the State of Washington, points within the State of Washington, yes, sir.

The Court: And if I understand the witness correctly, this is all of the fish which your company handled from the State of Washington to points within the State of California for the period mentioned?

A. I couldn't tell you just what is on that list. I don't remember. [1170]

The Court: Well, look at it. Would that help you?

The Witness: Yes.

The Court: There are some to Riverside and——

The Witness: Yes, I had them compile a list of shipments to Los Angeles and San Diego area. If there are some here listed to Sacramento, I don't think they should be listed. I don't think you will find many other than just this Southern California area on the list.

The Court: In other words, this is to the Southern California area?

(Testimony of Donald H. Roberts.)

The Witness: Yes, Los Angeles and San Diego area.

* * *

The Witness: Yes.

The Court: I would say if the exhibit is admissible it ought to go in in its entirety.

Mr. Kenny: That is the point we were going to make, your Honor. [1171]

* * *

Voir Dire Examination

The Court: Any other questions?

Mr. Andersen: The only other question we have, may it please the Court, is that we should like to have the privilege of inspecting the supporting records for this. I assume Government would have no objection to that. Is that correct, Mr. Schwartz?

Mr. Schwartz: No, I think under the circumstances we are not——

The Court: You don't have any objection?

The Witness: No, not at all.

The Court: But I want to limit the person who goes down to inspect them.

Mr. Andersen: It would be Mr. Fuss or one of counsel, your Honor.

The Court: Two persons?

Mr. Andersen: Yes.

The Court: One lawyer on behalf of the defendants and Mr. Fuss?

Mr. Andersen: That is, the defendants we represent, your Honor.

(Testimony of Donald H. Roberts.)

Mr. Garrett: Is it offered?

Mr. Schwartz: The document was offered.

The Court: Yes, he offered the document and then you said you wished to ask some questions.

Mr. Kenny: I think, your Honor, he offered it for a limited purpose and your Honor indicated it should be for all purposes.

The Court: If it is admitted it will be admitted for all [1178] purposes.

Mr. Schwartz: If the Court please, under those conditions I want to renew my offer for a limited purpose, and if the Court rules that it is to be admitted for all purposes if at all, I would withdraw my offer and ask that another compilation be made.

The Court: What is that?

Mr. Schwartz: I will ask that another compilation be made in conformance with my limited offer.

Mr. Kenny: Then, your Honor, we will offer it.

Mr. Garrett: Just a second.

The Court: Do you offer it?

Mr. Kenny: I think certain parts of it.

The Court: Do you offer it? If not, be seated and you can talk it over.

Mr. Kenny: We don't want to offer the part that he offered. If he offered the part he has, we want the rest of it in.

The Court: I think if any part of it goes in it ought to all go in.

Mr. Schwartz: I will renew my offer to let the whole thing go in, your Honor.

Mr. Kenny: That is all we want.

(Testimony of Donald H. Roberts.)

Mr. Garrett: Then, if your Honor please, I have my foundation objections. [1179]

* * *

Mr. Andersen: Before Mr. Garrett makes his statement, I want to just raise one question. I understand, may it please the court—at least, it is the practice to which I am accustomed—that in a situation like this where a compilation is introduced, with rights given opposing counsel to consult the basic documents, that thereafter if there is any difference or anything, or any variation that should be cleared up, that the witness on the stand may be recalled for further cross examination.

The Court: The witness' cross examination is not precluded.

Mr. Andersen: Precisely, that is what I understood.

The Court: In other words, as we did with Mr. Ross. Ross was here and returned to the witness stand for cross examination the following morning after you had examined his books, and that would certainly be the procedure here.

Mr. Garrett: I object to the admission of 24, for identification, your Honor, on the ground that no proper foundation has been laid, and upon the ground that the defendants are being deprived from having the opportunity to test the foundation for the document at the time it is admitted, and are being deprived of the rights that they should have in the nature of cross examination.

(Testimony of Donald H. Roberts.)

I further object to this particular document upon the ground that it is incompetent, irrelevant and immaterial, [1183] that it is hearsay, that it shows alterations on its face which are not a portion of the original compilation.

The Court: Where is the document?

Mr. Garrett: I refer now to the handwritten matter on the last page and the marks and notations on the first page.

(The exhibit was handed to the court.)

The Court: Go ahead.

Mr. Garrett: Of course, I refer to the fact that there is no statement as to point of origin, which is the purpose for which this document is founded, which is made in such a way that anybody would be responsible for perjury if the documents were not as represented, to-wit, the lack of any specific—

The Court: On the other hand, he has testified that it was from Seattle and the State of Washington, and all of these points are from the State of Washington.

Mr. Garrett: The document taken between its four corners, I make this point, your Honor, is one which does not state anything about the point of origin.

If your Honor please, my point is this, and as to this document the same is true of all other compilations which have been admitted up to this point in this trial: upon the express showing on cross examination, voir dire, foundation, it has appeared that

(Testimony of Donald H. Roberts.)

in practically all cases, except the case of the Railway Express records, the documents could have been [1184] produced and could have been produced easily in this court room, where they would have been available for the inspection and scrutiny of defense counsel while the witness was on the stand, so that he might be cross-examined on them as a matter of foundation, and as a matter of their applicability as compilations to the information contained in the books, prior to their receipt into evidence.

The documents which have been available supporting these compilations have not been produced in any case except one. The one case where those documents were produced, they were not produced in the court room and were only produced in the offices of the United States District Attorney, where their use was limited, and where their inspection for purposes of ascertaining the veracity of the compilation by comparison with them was restricted to the extent that in my opinion it must be said that an inspection was denied, substantially.

Now, the fact of the matter remains, and it may be said, that the defendants in this case have the right to subpoena these records themselves. That will involve almost, necessarily, in every case, if we subpoena the records themselves, putting them on in what would appear to me to be the only practical way to bring in the records ourselves, as part of our own case, that we will be forced to swear and be bound by testimony of witnesses who are hostile to

(Testimony of Donald H. Roberts.)

the defendants. I don't particularly speak of this witness here on the stand, [1185] but I speak particularly of the fish dealers who were testifying in this case and introducing compilations. I think there is sufficient——

The Court: There is only one complication by a fish dealer, and that was Ross.

Mr. Garrett: That is right. And I think that the evidence will show, before we are through here, and I believe the evidence already does indicate that Mr. Ross has an interest highly adverse to the defendants, that he may well be involved in a plan or design to involve them in criminal prosecution, in so far as he is able, for the purpose of solving his own labor difficulties. And I say that the defendants in order to find out what is back of his compilation shouldn't be put to the extremity of calling a man like that, or witness like that, as their own witness.

I say we have no right, as a matter of right, to recall any of these witnesses for further cross-examination, although that privilege may be extended by the court. I say that as a matter of——

The Court: You were not foreclosed from that at the time the opportunity for inspection was made, and the witness was not excused until you indicated that you had no further questions.

Mr. Garrett: I submit that the cross-examination of the witness Ross upon his records is a very unenlightening example [1186] of what will probably happen in the event of further attempts to test by the original records the compilations pro-

(Testimony of Donald H. Roberts.)

duced by these witnesses. I say to your Honor, particularly in the case of records such as his, or any of these records, except those of the Railway Express Agency, which I can see are too bulky for handling, there is no reason why they shouldn't be produced in court for the inspection of counsel, and that any record that can be produced in the offices of the Antitrust Division for inspection can just as easily be introduced in court where your Honor can control its use, and it will not be subject to the prosecuting party in this case.

The Court: There is no evidence that this man's records were in the offices of the Anti-trust Division. And except for Ross—and the records were made available to you—and the Railway Express Agency, there have been no other records involved.

Mr. Garrett: There is another point I wish to make. I will try to be very short.

Commerce is an element of the United States. The very statements made by the government attorneys in court indicate that if we attempt to go beyond those portions of the records basic to these compilations, which they deem proper for us to see, that we will not be permitted by any of these witnesses in inspections at their places of business to see any portions of the records they do not deem proper. [1187]

The Court: Counsel, the purpose of producing records here on an examination such as this is to determine their accuracy. In other words, if this document is an accurate reflection of those records, then the purpose of the cross-examination has been

(Testimony of Donald H. Roberts.)

completed, unless from the face of the records themselves concerning that which is in the document you have some other ground to show that they are not correct or accurate.

Mr. Garrett: There is another basis than accuracy, your Honor. A document accurate in and of upon his compilation from the documents from question of proof that it is adduced to sustain. For instance, it may be the documents this man has relative to shipments into Los Angeles proper may have just as important an effect on the question of whether or not there has been an effect on commerce during the months in question as the documents he has on the shipments into San Pedro. I think it has. I think it is just as important. The government's attitude is very clear here. They don't. They want to preclude us—they want to run a knife down Southern California——

The Court: On the basis that that is defensive matter.

Mr. Garrett: But the point I am trying to make is when compilations of documents are being adduced here for probative purposes by the government, we have a right to cross-examine the witness upon his compilation from the documents from which [1188] while he is a government witness—from the documents from which the compilation is made, and all of them, not merely the San Pedro portion, if you please, in the case of a limited offer like this. But if in those books there is information on the whole factor which the government has

(Testimony of Donald H. Roberts.)

opened up only with figures on the San Pedro factor, then we ought to have a right, as I say, to put in the evidence from the same witness while he is on the stand.

That is the risk the government takes when it offers the evidence, in the first place, having any relevant associated matter which may cast light upon the figures they offer brought out by the defense, while the government's case is on and while the witness is on the stand, and while the matter is fresh in the minds of the jury. It is just like cross-examination. The government can't bring out a portion of the books and then slam the door.

The Court: The government can bring out that portion of the books which they deem material.

Mr. Garrett: That is right.

The Court: And certainly when anybody asks a question concerning anybody's books it doesn't mean that everything in those books is subject to cross-examination or open to cross-examination, counsel.

Mr. Garrett: But it is cross-examination to bring out other parts of the books and ask the court whether the court [1189] deems those parts material to go before the jury as part of the cross-examination of the document or the witness, if your Honor please. And in the way we are proceeding, that isn't happening. We are being put, as a practical matter, to the risk of calling this entire budget of adverse witnesses as our own witnesses, and being bound by their statements and sustaining whatever harm they may choose to do us.

The Court: Are you finished?

(Testimony of Donald H. Roberts.)

Mr. Garrett: Yes, your Honor. [1190]

The Court: Do you wish to be heard?

Mr. Dixon: Not unless your Honor cares to hear my argument on the point. We feel that we have gone into the matter at length at other times and are satisfied with your Honor's ruling on the matter and that it is the law.

The Court: I think the books should be made available.

Mr. Dixon: Merely to check, as your Honor has stated.

The Court: To check the accuracy of what is in this document.

Mr. Dixon: That is right.

The Court: The ruling on the admissibility of this document will be withheld.

However, I am not going to instruct this witness or any other witness to turn over his books and records and give unlimited access to an examination of the entire business by defense counsel or their auditors. The thing that is material here is the commerce in fish in Southern California.

Mr. Dixon: That is right, your Honor. And all the government really has to do here is to show—I mean to make a case is to show—that the subject matter of restraint alleged to be imposed here, or of the conspiracy, namely fresh fish, is in interstate commerce. That is only material from a point of view of showing jurisdiction.

Mr. Andersen: With respect to the inspection——

(Testimony of Donald H. Roberts.)

The Court: What are you offering this for, then? [1191] What is this offered for?

Mr. Schwartz: This is on the charge of commerce, your Honor.

The Court: You have all kinds of evidence here that fish is shipped in interstate commerce. Is this just cumulative?

Mr. Andersen: That is all it is.

Mr. Schwartz: By way of being cumulative as well as being direct evidence of the man who actually ships the merchandise in interstate commerce.

The Court: One witness testifying to a fact is sufficient to prove it. Every one of the fish dealers has gotten on the witness stand and testified that they bought and sold fish in interstate commerce, and if this is just cumulative——

Mr. Schwartz: I agree there is a limit to the quantum of proof: If there are 12 or 13 dealers, we call 3. There are several hundred fishermen and we have called 15. Of course, you try to limit the quantum of proof, but it is a matter of judgment how much proof should be adduced on any given factor of the government's case, whether it be commerce or any other point. But I think it is certainly material in a matter which the court should be very interested in, to determine from the very man in the organizations that transport this merchandise in interstate commerce as to how they do [1192] their business and what happened with respect to the activities of the defendants as charged in the indict-

(Testimony of Donald H. Roberts.)

ment. Of course it is just one phase. We propose to follow this witness with another witness from that company.

Mr. Andersen: I don't believe that we would make an objection based upon the evidence being cumulative, because we think the government would have a difficult test in proving the commerce question. But with respect to the inspection of this witness' books, with respect to the witness Ross as well as this witness, we had, and have, no intention of making any untoward examination of the books, save and except as the inspection of the books may be reasonably limited by the nature of the testimony offered. When they offer the compilation they offer the books. The books are in legal contemplation in evidence. The compilation simply takes the place in evidence of the actual records in the office of the witness. So while inspection of the books, may it please the court, will be limited to matters which are material to the direct examination of this witness and proper examination of the witness as though the books were here. When the books are in evidence, and they are in evidence, they are in for all purposes material to the case.

The Court: What is the bulk of the records from which this document was taken?

The Witness: Freight bills are the only thing.

The Court: What is the size, would it fill this room, a truck, a suitcase, or what?

The Witness: The number of bills wouldn't fill—just a couple of file cabinets this long (indicat-

(Testimony of Donald H. Roberts.)

ing). They would have to be picked out of bills that would fill a room this size, eight or 10 feet square.

Mr. Andersen: Could I ask your address?

The Witness: 2474 Porter Street.

Mr. Dixon: I think the rule which your Honor is applying in this case is the rule of business convenience, which seems to be well recognized by the law for the reasons that practically all of these witnesses have testified to.

The Court: I think that I will instruct the witness to make his records available, that is, the records from which this exhibit was compiled, which is the freight bills, and when can you have your people down there to examine it?

Mr. Andersen: Well——

The Court: Tomorrow?

Mr. Andersen: We would have to get in touch with Mr. Fuss. Probably tomorrow, Friday or Saturday.

Are you open on Saturdays?

The Witness: Half a day.

Mr. Andersen: One of those three days. Possibly Friday would be the better day.

The Court: I will reserve ruling then and the witness [1194] will be temporarily excused, subject to the order of the court to return for further cross-examination, and defense counsel will take it up with the government when they will have their examiners available.

Mr. Andersen: It shouldn't be necessary for the government to be there. We will make no untoward

(Testimony of Donald H. Roberts.)

examination of the witness' records, your Honor. We don't want any names or anything like that. We just want to check the material things. I sort of feel that it is wrong to impose surveillance on us.

The Court: You have some auditors, do you not?

Mr. Schwartz: No, we do not have any auditors, but after the experience we had the last time I think it better be made pretty clear by the court just what they can or cannot do.

The Court: They can examine these freight bills. Is that what you call them?

The Witness: Yes.

The Court: From which this record was compiled?

The Witness: Yes.

The Court: You will communicate with the government and advise when your party will be there, and they will communicate with this witness here and the government, if they desire, may have a representative present at the same time. If they do not desire it they do not need to. [1195]

* * *

(The jury returned to the court room at 4:15 o'clock p.m.)

* * *

The Court: The ruling of the court on the matter presently under discussion, which was the offer in evidence of Exhibit for Identification No. 24, the objections of Mr. Garrett thereon, is as follows:

The ruling will be reserved. The witness may be temporarily excused to be recalled on order of the court for further cross-examination, if any parties

(Testimony of Donald H. Roberts.)

desire it. The witness will make available to the defendants the freight bills from which Exhibit 24 was compiled at such time as he shall receive word therefrom from government counsel, who will receive word from the defendants as to when they may desire to examine the books.

The defendants will be limited to one lawyer and to two auditors. Do you want to go down too, Mr. Garrett?

Mr. Garrett: No, I will send an auditor.

The Court: Mr Law?

Mr. Garrett: Either Mr. Law or some other person whom [1196] I will designate to the court.

The Court: Very well. Mr. Law and Mr. Fuss and one of the defense counsel.

The government may, if they desire, at the same time have one of their representatives present.

In the meantime Mr. Roberts may step down.

(Witness temporarily excused.)

The Court: Next witness.

H. L. KERSBERGEN

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Kersbergen, what is your business or occupation? [1197]

(Testimony of H. L. Kersbergen.)

A. I am the local agent for the West Coast Fast Freight.

Q. How long have you been in that occupation?

A. Approximately 16 years.

Q. What are your duties as local agent for the West Coast Fast Freight?

A. The handling of the local operations.

Q. Just what does that entail?

A. The movement of the trucks, merchandise and the personnel.

Q. Give us some of the details?

A. It includes the unloading, the loading of vehicles, and the dispatching of the trucks, the handling of the drivers that are on the vehicles.

Q. Does your company handle shipments of fresh fish from points in Washington to the San Pedro fish markets?

A. Yes, we do.

Q. Do you have anything to do with that?

A. Yes, I do.

Q. Will you relate what that is that you have to do with those shipments?

A. After the trucks arrive in town, it is one of my duties to see to it that the trucks are dispatched to the proper destination and unloaded.

The Court: In the course of business, do they come [1198] to your depot first and then do you dispatch them around?

The Witness: That is correct: They come into the terminal first.

Q. (By Mr. Schwartz): Do you dispatch those particular trucks or the trucks unloaded and loaded on other trucks?

(Testimony of H. L. Kersbergen.)

A. Some of it is unloaded and handled on other equipment; some of it is dispatched on the line equipment direct.

Q. Do you direct the drivers where to deliver the merchandise, Mr. Kersbergen?

A. That is correct, sir.

Q. With respect to the shipments of fish to San Pedro, do you direct them as to where they are to take them?

A. That is right, sir.

Q. Where is the point of destination of San Pedro fish?

A. The majority of the San Pedro fish is destined to the pier.

Q. At the Municipal Fish Wharf?

A. That is right, sir.

Q. Now was that true up until and including the month of May, 1946?

A. Yes, I believe that is correct.

Q. Did any changes take place on or about the 29th of May, 1946, with regard to the consignment of fish to the fish [1199] dealers at San Pedro?

A. In the early part of 1946 we were instructed for a period to deliver the fish elsewhere than the pier.

Q. Early part of when?

A. Early part of 1946. I would say—I thought

(Testimony of H. L. Kersbergen.)

it was a little earlier than May. I am vague as to the dates. It is quite some time ago.

Q. Do you have any reference to a so-called strike? A. That is right, sir.

Q. Assuming that the date that that strike began was May 29, 1946, assuming that to be the date, what changes, if any, took place in the operations at your place of business with reference to consignments to San Pedro?

A. The fish for the duration of the strike were not delivered to the pier.

Q. Where were they delivered?

A. A portion of the fish were delivered to the Union Ice at Wilmington, a portion to the Ocean Foods, at Long Beach.

Q. At whose request were those shipments made to the points you have just mentioned?

A. We received instructions from the broker.

Q. Is that the usual course of business?

A. That is right, sir.

Q. And that condition existed, you say, for the duration of the strike?

A. That is correct.

Q. Do you know of your own knowledge what happened to those consignments after they were dropped at the points you have mentioned in Wilmington and Long Beach, was it?

A. Wilmington and Long Beach.

Q. Yes.

A. No, I don't remember.

(Testimony of H. L. Kersbergen.)

Q. Now, some time after the strike, or during this so-called strike, you say you resumed operations in a normal course of business as before?

A. Yes, that is right.

Mr. Schwartz: Take the witness.

Cross-Examination

By Mr. Andersen:

Q. As I understand it, sir, the only change about that time was that you delivered the fish to a different place, is that correct?

A. That is correct.

Q. The fish came in as they always had and you delivered them instead of to the dock, you delivered them to the ice company or at Wilmington or some other place there?

A. That is right. [1201]

* * *

ROBERT D. GANO

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Robert D. Gano.

The Clerk: Your address?

The Witness: 3415 Tilden Avenue, Los Angeles.

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation, Mr. Gano?

(Testimony of Robert D. Gano.)

A. Terminal manager of the Los Angeles-Seattle Motor Express.

Q. Where is the Los Angeles-Seattle Motor Express?

A. Los Angeles; 1672 Staunton Avenue.

Q. What is the business of that company? What do they do?

A. Transfer of general freight; common carriers.

Q. From where to where?

A. Northwest to Los Angeles; Washington and Oregon.

Q. Washington and Oregon to Los Angeles?

A. Yes, sir.

Q. What kind of freight do they handle?

A. Well, all types of freight. To the south the general run is frozen fish, foods, and so forth.

Q. Is that accomplished by motor trucks?

A. Yes, sir.

Q. What are your duties as terminal manager of that company, Mr. Gano?

A. Charge of the office, and also the operations.

Q. Mr. Gano, did you some time last year receive a request from the Department of Justice to make a compilation of shipments of fish from points in the Northwest to this [1204] area?

A. Yes, sir, I did.

Q. And was such a compilation made up?

A. Yes, sir.

Q. And by whom was it made?

A. By our chief clerk, Jack Nichols.

(Testimony of Robert D. Gano.)

Q. Is Mr. Nichols under your supervision and control at your company? A. Yes.

Q. Was this compilation made under your general supervision and control? A. Yes, sir.

Q. What was the source of the information from which this compilation was made?

A. It was made up from manifests of the truckloads, and also the waybills or freight bills of each particular shipment.

Q. How were these records maintained at your company?

A. They were filed daily by numbers, freight bill numbers.

Q. What do these records show?

A. Shows the shipper, consignee, weight, and revenue of each shipment.

Q. About how many shipments a month does your company handle? [1205]

* * *

A. 200 per day.

Q. 200 a day. Was that true in 1946?

A. Yes, I would say it was.

Mr. Schwartz: Mark this, please.

The Court: 25, for identification?

The Clerk: Yes, your Honor.

(The document referred to was marked Government's Exhibit 25, for identification.)

Q. (By Mr. Schwartz): Mr. Gano, I show you Government's Exhibit No. 25, for identification——

* * *

(Testimony of Robert D. Gano.)

Q. (By Mr. Schwartz): —and ask you whether that batch of documents is a compilation which you just testified as having been made up from the records of your company.

A. Yes, sir, it is.

* * *

Q. (By Mr. Schwartz): This is a compilation showing the weekly figures of shipments by pounds of fresh fish and crustaceans to dealers, wholesalers, and any and all others located in the ports of Santa Monica, Rendodo Beach, San Pedro, Newport Beach, and San Diego, or to their warehouses, from any and all points outside of the State of California from [1206] July 1, 1945, to July 17, 1946. Is that what this document purports to contain, Mr. Gano?

A. Yes, sir.

* * *

Mr. Schwartz: Yes. We offer in evidence Government's Exhibit No. 25.

* * *

Voir Dire Examination

By Mr. Garrett:

Q. You say some of these figures came from waybills and some came from manifests. Was your waybill or manifest record, either one of them, incomplete so that your figures had to be supplied from the other? [1207]

A. You misunderstood me. They came from both manifests and waybills, which are both the same.

(Testimony of Robert D. Gano.)

The Court: They are both the same?

The Witness: Yes, sir.

Q. (By Mr. Garrett): Are those waybills which you also call manifests kept in your office here in the city? A. Yes, sir.

Q. Are they in charge of the bookkeeper or office manager whom you named?

A. Yes, sir, he has access to them.

Q. I beg your pardon?

A. Yes, they are in charge of the chief clerk.

Q. Do you have them audited at regular intervals? A. No, we don't.

Q. Is the information from those waybills copied in any books which you keep in the ordinary course of business?

A. It would be kept in the Seattle office, which is the head office of our firm.

Q. Your books are in Seattle, is that correct?

A. The main auditing books are in Seattle.

The Court: The data from which this material came from is here, as I understand?

The Witness: Yes.

Q. (By Mr. Garrett): Is it all here now?

A. Yes, sir. [1208]

Q. Have you ever been requested to bring any of it to this building? A. No, sir.

Q. At any time? A. No, sir.

Q. Were you ever requested to make any compilation based upon the shipments from out of state for the same period into other portions of Southern California than the sea coast ports which you have named?

(Testimony of Robert D. Gano.)

A. This is the only report we have made.

Q. You don't make up such reports in the ordinary course of your business, do you?

A. No, sir.

Q. You just made up this one specially at the request of the government, is that right?

A. That's right.

Q. And they asked you to report on shipments into these seaports only, is that right?

A. Yes.

Q. And to report only for the period to which they limited the survey, is that right?

A. That's right.

Q. And you haven't made any inspection of your waybills to determine how much fish was being delivered to points other than San Pedro, Santa Monica, in Los Angeles County during [1209] the period covered? A. No.

Q. Or any part of the period covered?

A. I have not.

Q. One more question: Do you carry into Los Angeles County from any points other than points to the north of Los Angeles?

A. We are interstate carriers, and all we can carry is from Oregon and Washington to Los Angeles or Southern California.

Q. You don't carry in here from any other states than Oregon and Washington?

A. That's right, we do not.

Q. Do you carry anything into Los Angeles County from points in California north of Los Angeles? A. No.

(Testimony of Robert D. Gano.)

Mr. Garrett: No further questions.

Q. (By Mr. Andersen): Do you have records available showing all shipments during the period of time covered by the proposed exhibit?

A. Yes, we have our freight bills.

Q. Showing shipments into Los Angeles County, as well as the sea ports that you have mentioned?

A. Yes, sir.

Q. You weren't asked by the government to prepare a [1210] list showing all shipments brought into this general area here, were you?

A. No.

Q. Simply those four or five ports that you mentioned? A. Yes, sir.

Q. But those records are available in your office here in Los Angeles? A. Yes.

Q. Where is your office?

A. 1672 Staunton Avenue.

Q. 1672 Staunton Avenue? A. Yes.

Q. Can you tell us if the amount of shipments brought into this entire territory, Los Angeles, during the month of June of last year were substantially the same as the amount in May of last year?

A. No, sir, I couldn't tell you that.

Q. From looking at these records could you tell us? A. No, I couldn't.

Q. Are you personally familiar with the records at all?

A. I had them made up, yes, sir. [1211]

* * *

Mr. Andersen: That is all.

(Testimony of Robert D. Gano.)

Mr. Schwartz: That is all, your Honor.

The Court: The document is admitted in evidence.

Mr. Garrett: Objected to on the same grounds——

The Court: Nobody said anything.

Mr. Garrett: I hope your Honor will permit me to state my objection before your Honor's ruling. I am not quite agile enough sometimes.

The Court: Go ahead and state it.

Mr. Garrett: I merely want to object to the introduction of 25 on the same grounds as stated in my objection to the introduction of Government's 24.

Mr. Andersen: I want to object on one ground. That is that I don't believe the government is within its rights in endeavoring to carve out from an area any particular area. In other words, as I understand the government's position, they claim there was an interference with interstate commerce in the area, and Los Angeles is certainly part of the San Pedro [1212] area.

The Court: I think we have gone over that, counsel.

Mr. Andersen: I want that as an objection.

The Court: Yes, it is noted.

Mr. Andersen: Secondly, I assume——

The Court: The witness will remain under the order of the court.

Do you desire to examine his books and records?

Mr. Garrett: Yes, we do, your Honor.

Mr. Andersen: Yes, sir.

(Testimony of Robert D. Gano.)

The Court: Very well. The witness will remain under the order of the court, and I will make the same order here as I did in connection with the last witness, which is to this effect, Mr. Gano: That upon order of the court you will return to complete any further examination or cross-examination that may be desired by the parties.

Mr. Andersen: I wonder if we could request the court to have the witness make a compilation——

The Court: Maybe you won't want it after you get down there.

Mr. Andersen: On Exhibit 24, the last one admitted into evidence, the compilation showed the fish brought into this general area. If the witness would compile a list showing——

The Court: I will make the same order here, that you [1213] can go down and look at it.

Mr. Andersen: All right, your Honor.

The Court: Counsel for the defense will designate one lawyer, and an investigator or accountant whose name is Fuss; Mr. Garrett will designate a man by the name of Law, or some other person if Law is not available, in which event he will name the person, and they will communicate with government counsel who will call you when they desire to go over the books and records; and government counsel may have, if they desire, but need not have, any one of their representatives present during the examination by Mr. Fuss, one of defense counsel, and Mr. Law. That should be before the expiration of this week?

Mr. Garrett: Yes.

(Testimony of Robert D. Gano.)

The Court: It will be some time before the expiration of the week.

Let us have this straight. What records did you use to take these from—just the waybills?

The Witness: Waybills. [1214]

* * *

The Court: All right. You will make available all of your waybills during the period covered, so that the parties I have indicated may examine them. Do you understand that now?

The Witness: Yes.

The Court: All right, Mr. Gano. [1215]

Mr. Andersen: I assume, may it please the Court, that we may examine the books or way-bills, whatever the documents are, with respect to this shipment into Los Angeles?

Mr. Schwartz: No.

The Court: Whatever way-bills he has from which these were compiled.

Mr. Schwartz: My it please the Court, this does not include Los Angeles.

The Court: I know it does not include Los Angeles.

Mr. Andersen: We would like to examine them with respect to Los Angeles, your Honor.

The Court: Whatever way-bills he has for the period covered by this document.

Mr. Andersen: That is good enough, your Honor.

The Court: Will be made available.

(Testimony of Robert D. Gano.)

Mr. Schwartz: Does that mean to include ports other than the one specified in the indictment?

The Court: Yes.

Mr. Schwartz: We object to that, if the Court please.

The Court: Objection overruled.

Do you understand that now?

The Witness: Yes, your Honor.

The Court: If there is any trouble about it, let me know.

The Witness: Yes, sir.

The Court: You may step down. [1216]

(Witness excused.)

The Court: You are excused subject to further call.

That is marked for identification No. 25?

The Clerk: Yes. [1217]

* * *

WILLIAM L. SIMPSON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schwartz:

Q. Mr. Simpson, what is your business or occupation?

A. I am dispatcher for the Los Angeles-Seattle Motor Express.

Q. Where is that?

A. 1672 Staunton Street, Los Angeles.

(Testimony of William L. Simpson.)

Q. How long have you been with that company?

A. About two and a half years.

Q. What are your duties as a dispatcher?

A. Well, I dispatch the loads to be unloaded, dispatch the trucks to pick up the loads going out of the state to points in Oregon and Washington.

Q. Among your duties, do you have to dispatch shipments of fish arriving from the northwestern part of the country to San Pedro markets?

A. Yes, I do.

Q. Will you state how you do that?

A. Well, the trucks come to our terminals, trucks and trailers, and the complete loads are unloaded, and fish for Los Angeles, Wilmington, San Pedro, Long Beach and San Diego is all in one truck. They are broken bulk in our terminal, put on smaller trucks, some of it, and some of it is straight loads dispatched to those destinations.

Q. Now in doing that, do you indicate to the drivers of these various trucks when they are to deliver these separate loads?

A. Yes, we do, and also their bills show where the loads are to go.

Q. Now with reference to the wholesale fish dealers at San Pedro, where do you direct the drivers to deliver the fish shipments?

A. To the fish wharf. [1224]

Q. The Municipal Fish Wharf?

A. Municipal Fish Wharf.

Q. At San Pedro?

A. Yes, sir.

(Testimony of William L. Simpson.)

Q. Now was that your practice and custom until some time up to the 29th day of May 1946?

A. Yes, sir.

Q. Now directing your attention to that date, were any changes brought to your attention?

A. Yes, there was.

Q. What changes in the practice of delivering fish to the fish dealers at San Pedro took place on or about that date?

Mr. Andersen: To which we will object as calling for a conclusion and opinion of the witness, and insufficient foundation laid, may it please the Court.

The Court: Objection overruled.

The Witness: Well, I dispatched fish down there to the Municipal Wharf and they seemed to have a picket line——

Mr. Andersen: Move that that be stricken as calling for a conclusion and opinion of the witness, they seemed to have.

The Court: The last section, they seemed to have a picket line, will be stricken as a conclusion.

The Witness: Well, they had a picket line.

* * *

Q. Were the shipments of fish that you dispatched to the dealers at San Pedro delivered to the fish dealers' place of business after the 29th day of May and during the month of June, to your knowledge?

A. No, they were diverted back. Some of them went to various——

(Testimony of William L. Simpson.)

Mr. Andersen: I move that be stricken as not responsive to the question.

The Court: The motion is denied. [1226]

Q. (By Mr. Schwartz): Go ahead.

A. It was diverted back to Los Angeles, to various dealers in Los Angeles.

Q. Go ahead.

A. I can give you the term of some of the shifts.

Q. You can give me what?

A. The places where they were rediverted.

Q. If you would. A. Standard Fish——

The Court: Wait a minute. Are you talking about the whole month of June or are you talking about the 29th of May?

Mr. Schwartz: I am talking about the period from the 29th of May, and the month of June.

The Court: Very well.

The Witness: Standard Fish came back to Western Fish; L. A. Fish and Oyster came——

Q. (By Mr. Schwartz): Where is Western Fish?

A. San Pedro——Western Fish is in L. A.

Q. Go ahead.

A. Los Angeles Fish and Oyster at San Pedro was diverted to National Seafood in L. A.

The Court: Is that all?

The Witness: Several others were diverted.

Q. (By Mr. Schwartz): Do you recall what they were, offhand? [1227]

A. I don't just recall where they were diverted. There were others that were diverted back. Holly got some of it.

(Testimony of William L. Simpson.)

Q. Who is Holly?

A. Holly Seafood at L. A. Some of it was diverted from San Pedro back to Freeman Certified Fresh Fish.

Q. At whose direction were these shipments of fish diverted to these places you have mentioned?

A. The direction was directed by the dealer at San Pedro. I, in turn, contacted him on the phone.

Q. Don't say what was said. Just tell us what happened.

The Court: You have answered the question.

Mr. Schwartz: All right.

Q. (By Mr. Schwartz): Did any of the shifts of fish which were diverted, as you have indicated, go to the Union Ice Terminal at Wilmington, do you recall?

A. Yes, there was some attempted to be delivered there, but was not delivered.

Q. You don't know why they were or were not? Or do you?

A. Only what my driver told me. [1228]

* * *

Q. By Mr. Schwartz: Was there a driver by the name of James Gassio, one of your drivers during this period? A. Yes.

Mr. Schwartz: Thank you.

The Court: On or about the first of July was the delivery of fish resumed as it had been previous to these diversions you speak of?

The Witness: I believe that is about——

The Court: In the same manner?

(Testimony of William L. Simpson.)

The Witness: Yes, about the same date. The exact date I don't remember.

Mr. Andersen: No questions.

The Court: You may be excused.

W. L. SCOFIELD

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir.

The Witness: W. L. Scofield.

The Clerk: And your address?

The Witness: State Fisheries Laboratory, Terminal Island. [1229]

Direct Examination

By Mr. Schwartz:

Q. Mr. Scofield, what is your business or profession?

A. I am employed by the Division of Fish and Game, California.

Q. In what capacity?

A. In the Research Branch of the Bureau of Marine Fisheries.

Q. And what is your title?

A. Senior Aquatic Biologist.

Q. What are your duties as the senior aquatic biologist-

(Testimony of W. L. Scofield.)

A. I have been given charge of the fisheries statistical system in operation in the State.

Q. Where is your office?

A. At Terminal Island.

Q. Just what kind of an operation is that that you have charge of?

A. Well, we have a very complete system of fisheries statistics by which the catch of each fishing boat in the State is recorded daily.

Q. What is the extent of the territory over which your office has jurisdiction?

A. Well, the whole coast of California.

Q. The whole coast of California?

A. Yes. [1230]

Q. What kind of statistics is your office interested in?

A. Well, we are interested in the daily catch of each fishing boat.

The Court: The tonnage or the kind of fish?

The Witness: Both. The purpose is to get the return in fish per unit of fishing effort as an index to the changing abundance of fish in the ocean?

Q. (By Mr. Schwartz): Now as far as the gathering of that data is concerned, where do you get your information from?

A. Well, it is covered by state law that a fisherman selling fish shall be given a receipt by the buyer, and we are given a carbon copy of that receipt. So in that way we have the record of sales of fish.

Q. Now is there any other data—strike that.

(Testimony of W. L. Scofield.)

The Court: Is that what they call the fishing ticket?

The Witness: Yes.

Mr. Schwartz: Yes. I believe we have one of those in evidence.

Q. I show you what has been marked for identification—or are they in evidence, your Honor?

* * *

Q. (By Mr. Schwartz): I show you Defendants' Exhibit F for identification and ask you whether that is the receipt, the type of receipt, which you have just referred to.

A. No, that is not. These are the white and yellow copies. There are three copies. The original white goes to the fisherman, the yellow is kept by the buyer and the second carbon, a pink copy, is delivered to the State. [1232]

Q. Except for the color is it identical with these?

A. Yes, that is correct.

The Court: It is a pink carbon?

The Witness: Yes.

The Court: In the first part of your answer you said this is not. You refer to the clerk's identification ticket on top of that?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Schwartz): Mr. Scofield, have you attempted or have you made a study of where certain species of fish come from as to whether they be within or without the 3-mile limit?

(Testimony of W. L. Scofield.)

A. Yes. Under my direction the fisherman selling fish is expected to record the block number, that is, the ocean is divided into 10 nautical mile squares, 10 minutes of latitude and 10 minutes of longitude, and the fisherman delivering fish is expected to record the block number to give the locality of his catch. Many, however, do not.

The Court: He is expected to record that on this ticket that you get?

The Witness: Yes, or give the information to the buyer who is making out the ticket.

Q. (By Mr. Schwartz): Is that where the space marked "place where fish [1233] caught" is?

A. Yes.

Q. And do some of them fill in that information?

A. Yes, many do. We do not press for all because fishermen are inclined to give a fictitious number and we would rather have no number at all than the wrong one.

Q. Do you feel that the information which you get and which you use for that purpose is reliable?

A. Yes, I would say it is quite reliable. Those who record the numbers usually give the right number. Fishermen are inclined to keep secret their favorite fishing spot and in that case decline to give the number.

Q. Now from the information and data which you do have available, do you have any statistics or have you arrived at any conclusions, concerning this 3-mile limit catch that I was asking you about, whether they come from without or within the 3-mile limit?

A. Yes, especially—

(Testimony of W. L. Scofield.)

Mr. Garrett: Wait a minute. I object to that question as assuming facts not in evidence. [1234]

* * *

The Court: Objection overruled.

Mr. Andersen: May we object to the species of fish, may it please the Court?

The Court: It isn't clear.

Mr. Schwartz: I am going to get to that, as far as the species is concerned.

The Court: Objection overruled.

The Witness: The answer would be yes, especially for certain important species. For example, the sardine catch has been plotted——

Mr. Andersen: May it please the Court, sardines are not the subject of this inquiry.

The Court: Yes, they are. The testimony of one witness was that he caught sardines; the testimony of one dealer was that he bought sardines and froze them and sold them to other fishermen for bait; and the testimony of one of the fishermen was that he caught sardines and sold sardines to the fresh fish market.

Mr. Andersen: That is for bait, but if the witness were to be asked questions regarding sardines you would learn that those are the sardines caught by an entirely different kind of boat than is manned by these defendants. They are caught by what are called the purse seiners.

The Court: I don't know. If you can tell in advance what the witness is going to testify to, I don't know. [1235]

(Testimony of W. L. Scofield.)

Mr. Andersen: Those fish here are not——

The Court: The objection is overruled.

Q. (By Mr. Schwartz): Go ahead, Mr. Scofield.

The Court: Go ahead what?

Mr. Schwartz: I didn't think he finished with his dissertation.

The Court: Your question was whether he had the statistical data and he said yes, he did, and he could tell from it whether it came from within or without the 3-mile limit. And you said you were going to develop the species.

Mr. Margolis: May we take the witness on voir dire, your Honor?

The Court: Yes.

Voir Dire Examination

By Mr. Margolis:

Q. You have testified the information is obtained from certain types of slips which are turned in.

The Clerk: These are in evidence.

By Mr. Margolis:

Q. Which the Clerk now tells me, as we thought was correct, are in evidence, and which are similar in type to Defendants' Exhibits E and F which have been shown you.

Are those records public records from the standpoint that they are available to anyone for inspection?

A. No. They are declared by law as confidential to the extent of not revealing the business of any in-

(Testimony of W. L. Scofield.)

dividual or firm. The law does provide that the summaries may be made public and we have in most cases published the results.

Q. With regard to the question of where a fish is caught with regard to a particular species, your department from time to time has made summaries of these slips where the information was available and those summaries have been published, is that right?

A. That is true for important species.

Q. Are those publications public documents?

A. Yes—well, I don't know just what a public document is, but they are available to the public.

Q. They are not confidential?

A. Not the summaries.

Q. Anybody can get one of the summaries from the Fish and Game? A. Yes.

Q. And any testimony that you would give would be based upon your knowledge of what is contained in those summaries, is that correct?

A. Yes. [1237]

Q. These documents are also official documents, are they not, of the Fish and Game Commission, which is a department of the Government of the State of California?

A. Yes.

* * *

(Testimony of W. L. Scofield.)

Direct Examination

(Resumed)

By Mr. Schwartz:

Q. What does the study—as long as we are talking about sardines, what does the study which your office made as to where these fish are located indicate——

Mr. Margolis: If your Honor please——

Q. ——with reference to the three-mile limit?

* * *

Mr. Margolis: I want to object to the question on the ground it is incompetent, irrelevant and immaterial, not the best evidence, referring to a matter of which this court can take judicial notice, and which the court should take judicial notice of.

The Court: Overruled.

* * *

A. I take it by “located” you mean where the fish are caught?

Q. (By Mr. Schwartz): Within or without the three-mile limit?

A. In the case of sardines in Southern California, as I recall, about a third are caught inside the three-mile limit; farther north it is about half and half.

The Court: What do you mean by Southern California? Where is your division line?

The Witness: Well, we ordinarily take about Point Concepcion. That is a natural division point.

(Testimony of W. L. Scofield.)

Q. (By Mr. Schwartz): Where is Point Concepcion with reference to Morro Bay?

A. Point Concepcion is south.

Q. South of Morro Bay? A. Yes.

Q. About how far?

A. Oh, I don't recall. Not far.

Q. Fifty or sixty miles, a couple of hundred miles?

A. Nearer sixty, I would say.

Q. What would you say your study shows as to the catch within or without the three-mile limit in the Southern California area of barracuda?

Mr. Margolis: If your Honor please, may we have a standing objection to this line of questioning on the ground stated?

The Court: Yes, the same objection as heretofore indicated will go to this line of questioning, and the same ruling.

Do you have some notes or data there?

(Witness handing a paper to the court.)

The Court: Do you want to see this? He has a little card. Go ahead.

A. To refresh my memory I looked over some of our records and notes on species in Southern California. I have recorded here that barracuda, approximately 75 per cent inside the three-mile limit.

Q. Halibut?

A. Well, that is practically all inside, since it is a bottom fish.

(Testimony of W. L. Scofield.)

Q. Mackerel?

A. Mackerel is practically all inside. Some is caught outside.

Q. Rock fish?

The Court: Rock fish?

Mr. Schwartz: Rock fish.

A. That is about——

The Court: What do you mean? What is a rock fish?

The Witness: The fishermen call them rock cod. It is not a cod. Our official name for them is rock fish. It is a group of fishes. That is about 50 per cent inside.

Q. (By Mr. Schwartz): Sea bass.

A. That is the white sea bass, it is mostly inside.

Q. Tuna.

A. Well, the locally-caught tuna is mostly outside the three-mile limit, and, of course, that from the south is all outside.

Q. White fish.

A. I couldn't say as to white fish.

The Court: What do you mean by the term "white fish,"—shark?

The Witness: No; it is a particular market fish.

The Court: Market fish.

The Witness: Yes.

Q. (By Mr. Schwartz): You say you can't say as to that? A. No.

Q. Yellow-tail?

A. Well, my note here is that practically 90 per cent is inside.

(Testimony of W. L. Scofield.)

Mr. Schwartz: Will you mark this, please?

The Clerk: 26.

(The document referred to was marked Government's Exhibit 26, for identification.)

* * *

Q. (By Mr. Schwartz): Mr. Scofield, sometime last year you were requested to furnish certain information to the Department of Justice in regard to the fresh fish market?

A. I believe so.

Q. Do you recall when that was? A. No.

Q. Pursuant to that request, did your office, or did you or your office, furnish to the Department of Justice such a report on the fresh market fish landed in various regions of the Southern California district?

* * *

Q. (By Mr. Schwartz): I show you what has been marked as Government's Exhibit 26 for identification, containing three sheets, and ask you whether that is the information which you furnished this office, or the Department of Justice.

A. Yes.

Q. Now what is the source of the information which appears on Exhibit 26 for identification? What records or data were used?

A. This report is based on the so-called pink tickets or fish receipts.

Q. How are those pink tickets or fish receipts kept at your office, that is, physically?

(Testimony of W. L. Scofield.)

A. Well, they are filed but first the information is punched on cards so that summaries may be made, the system used by the Federal Bureau of Census.

Q. Would you say that the number of those files would be quite considerable, the number of those cards bearing that information?

A. Well, our storeroom for them is about the size of this room.

Mr. Schwartz: We offer in evidence Government's Exhibit No. 26.

Mr. Garrett: May I ask the witness same questions on the foundation, your Honor?

The Court: Yes.

Let me see the document.

(The document referred to was passed to the Court.)

Voir Dire Examination

By Mr. Garrett:

Q. Mr. Scofield, is the matter contained in that document that you have before you, which is marked Government's Exhibit 26 for identification, is that matter a result of an independent calculation of these cards or is it taken from summaries for 1945 already prepared at the time the report was made?

A. I think practically all, if not all, is summary from reports already run.

Q. I notice the name of some person appears at the head of that document. I don't recall the name.

The Court: G. Connor.

(Testimony of W. L. Scofield.)

Q. (By Mr. Garrett): G. Connor. Who is he, Mr. Scofield?

A. Miss Connor does the summarizing of the information by the punch card system.

Q. Did you receive this request for information from the Department of Justice yourself, the request which Mr. Schwartz referred to?

A. I am not quite sure. As I recall, some representative from the Department of Justice called at my office, we discussed the matter, and I then went with him to see Miss Connor and it was discussed there. That is my recollection. I am not quite sure.

Q. Discussed the matter with you?

A. I think so.

Q. Do you remember at that time what period it was requested that you figure?

A. No, I do not.

Q. Can you explain why these figures that are before us here come for the year 1945 instead of some other period? Was that at anybody's request? [1245]

A. No, the 1946 figures are not complete even yet. Some of the scattered dealers, especially in the northern part of the state, are slow in getting their tickets in. There are in some cases corrections and additions that have to be made, and the summarizing of the 1946 figures are not yet completed.

Q. What is true in that respect in connection with the 1945 figures?

(Testimony of W. L. Scofield.)

A. Well, they are completed. Occasionally there are some additions that come in later, but the 1945 tables are substantially completed.

Q. What tables and information for what year are the last which you have published?

A. 1945.

Q. That is already published, is it?

A. Yes—not in as much detail—I better explain it this way. We issue a special bulletin that gives rather complete data on values, number of fishing boats, number of fishermen, and so forth. As I recall, that bulletin has not been issued for 1945. But the tables of catch have been issued in another circular.

Q. And it is those tables of catch which are the basis for this summary which is No. 26, the document that is before you, is that correct?

A. Would you repeat that question? I don't quite understand it.

Mr. Garrett: Read it, Mr. Reporter.

(The question referred to was read by the reporter, as follows:

(“Q. And it is those tables of catch which are the basis for this summary which is No. 26, the document that is before you, is that correct?”) [1247]

The Witness: Well, I would say that it was the reports and tables in our statistical building that are the basis for this report. Whether or not those tables have been published for '45—I believe they have not all been published.

(Testimony of W. L. Scofield.)

Q. But they are contained in summaries whether published or unpublished which exist at the present time in your office? A. Yes.

Q. The differentiation there that you make in this document between fresh fish and other fish, upon what basis is that made? What species are contained in the tabulation of fresh fish catch?

A. Well, it is easier to explain it that only certain species are canned in this state: the five tunas, sardines, mackerel, and small amounts of other species.

Q. And so they are not included in the fresh fish figures in your compilation?

A. Only those that—only the poundage that is sold in the fresh fish market. The great bulk is sold to the canneries. The separation is rather easily made by deducting from the grand total the amount sold to canneries. Then what is left is the fresh fish market sale. That, however, is tabulated by the summaries for the different dealers in the different ports.

Q. As a matter of fact, a considerable quantity of [1248] yellow-tail is sold to canneries, is it not?

A. Yes; and canned.

The Court: As I understand, you deduct that, though, to ascertain the amount of fresh fish yellow-tail that is sold?

The Witness: Yes.

Q. (By Mr. Garrett): Is there anything in this document, 26 for identification, which is not contained in the summaries at your office?

A. I think not.

(Testimony of W. L. Scofield.)

Q. Are there any of the statistics there in 26 which are not being ascertained by an examination of the summaries in your office?

A. I think there is nothing there but what we could show to a qualified person in our office.

Q. I take it that summaries in so far as they have not been published are not available to the public?

A. Yes, that's true.

Q. You regard them as your private records, is that right?

A. No. We are obeying—it is provided in the law that those are confidential records in the hands of the Fish and Game Commission until summaries are made available.

Q. Perhaps you didn't understand my question.

A. I didn't. [1249]

Q. I am not referring to the original slips, I am referring to these summaries which first exist, I presume, in typewritten form in your office, and then later on are published. Now, of course if they are in their published form they are not confidential information. My point is do you regard the summaries in their unpublished form in your office as covered by the confidential information provisions under which you operate, as distinguished from the original cards or slips?

A. No; I think with some possible exceptions any tables that we would have that are summaries and do not reveal the business of an individual, we would show them to any qualified person.

(Testimony of W. L. Scofield.)

Q. There is nothing on this 26 for identification that reveals the business of any individual, is there?

A. I think not, no.

Q. Nor is there anything on the summaries from which 26 for identification was prepared, as far as you can say, is there? A. I think not.

Q. And there is no reason why those summaries themselves could not have been brought into court in so far as any legal disability you consider yourself under is concerned, is that right?

The Court: What summaries are you talking about, counsel? [1250]

Mr. Garrett: I am talking about the summaries——

The Court: From which he made this?

Mr. Garrett: Which are taken from the original records and which were used in producing this document according to the testimony of the witness.

Mr. Schwartz: He didn't testify to that. He says this was made from summaries and the records themselves.

Mr. Garrett: I think we have had further information on that, your Honor.

Q. (By Mr. Garrett): Didn't you testify, Mr. Scofield, that all of the information contained in 26, for identification, was available from the summaries?

Mr. Schwartz: Yes, but since that was made up. That is what he talked about.

Mr. Garrett: It is a question of foundation, your Honor.

(Testimony of W. L. Scofield.)

The Court: Do you understand the question?

The Witness: No. Possibly I could give a word of explanation.

The Court: Go ahead.

The Witness: The information on the tickets is transferred to a punch card, then the cards are run and tabulated by machines and printed; printed reports showing the pounds of each species caught at each port, another report shows price, another report shows the amounts handled by each dealer, and so forth. Then to prepare any such table as this exhibit 26, [1251] those so-called punch-card reports would be referred to. In this case I think it would be a little summarizing to get the figures in this form.

Q. (By Mr. Garrett): The punch-card reports are in themselves a summary of the figures either on catch or value for a certain period of certain fish in a certain area, is that correct?

A. Yes. Some of those reports are in great detail that we would not show to anyone outside. Some are sufficiently summarized in themselves from the original records that we would have no objection in showing.

Q. What are the facts in that respect with the punch-card reports upon which this compilation is based?

A. As I said, some are in such detail that they show the business of each individual fishing boat. Others are summaries. For instance, the catch in pounds for each species in each locality, that is

(Testimony of W. L. Scofield.)

already summarized and we would have no hesitancy in showing those.

Q. So that all of the information to authenticate this document No. 26 is in your office in the form of reports which are not so detailed that they cannot be made available?

A. I think that is true, yes. [1252]

Q. And the bulk of those reports for 1945, they could be included in very small volumes, could they not?

A. No, not such small volume because value is recorded there, and those summaries to show value are derived from rather bulky reports on sale prices. Then averages are struck for the sale price and multiplied by the number of pounds of that species in that locality to get that value. That is the value in money paid the fishermen on the average. So those reports are rather bulky.

Q. As to values then your figures are based at least in part upon estimations, are they?

A. I wouldn't call it estimation.

Q. Approximations?

A. It is an averaging in cases where that is necessary. If the price is always given then it is just a case of carrying out the calculation, the number of pounds at the stated price. However, we do strike an average to fill in the gaps where price is not recorded.

Mr. Garrett: No further questions.

Objected to, your Honor please, as not the best evidence and hearsay.

(Testimony of W. L. Scofield.)

The Court: Objection overruled. The document is admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.) [1253]

The Court: Mr. Scofield, on each one of these pages it says "fresh fish market," and for instance Santa Barbara region 1945, "estimated pounds in value 4,543,000 pounds, value \$551,500." Then it is itemized by ports in that region but down here is a parenthetical statement: "1945 totals include canneries species, 5,468,000 pounds. \$705,000," which is greater than this figure up here.

I do not understand that. If the smaller figure includes the greater, how could it—well, I do not see how the smaller figure could include the greater one.

* * *

The Witness: I think the intention here is that the grand total which is meant by 1945 totals are made up of this fresh fish as reported and the amount sold the canneries.

The Court: I see. And that would be true on the next page also here in the San Pedro area, for instance, where there the estimated pounds and value is 9 million but down here it is 531 million pounds?

The Witness: Yes. I think that is the explanation, your Honor.

The Court: Then let me see if I understand it now. In other words, the total fish going into the

(Testimony of W. L. Scofield.)

Santa Barbara market or Santa Barbara region is the estimated pounds which is fresh fish at the top here, plus the estimated pounds going [1254] to the canneries which is in the parentheses?

The Witness: I think that is correct.

* * *

Direct Examination

(Continued)

By Mr. Schwartz:

Q. What figures are used to get up the value column on these three pages? Is that the price paid to the fishermen by the buyer of the fish?

A. I think I have already explained that where price is recorded the extension is made to show the total amount paid for so many pounds. Where price is omitted an average price for that month or part of the month is made to give a value to those pounds from which the price was omitted.

The Court: In other words, if you had 5 million pounds for one month and you had the actual price paid for 4 million pounds, you would average that 4 million pounds price and apply that to the additional 1 million?

The Witness: Yes. Actually we are not particularly interested in values. We are interested in the price per pound as an index to changing economic conditions, but our interest is in the pounds of fish taken from the ocean rather than the values.

(Testimony of W. L. Scofield.)

The Court: Pounds of fish per unit used to get it? [1255]

The Witness: Yes.

The Court: What is your unit, man or boat?

The Witness: That varies from a knowledge of the fishery and the method of operating. In general, it might be called the daily boat catch.

The Court: Daily boat catch?

The Witness: Yes. The catch for a boat for a day. In some cases we use a trip. It depends on the fishery. The conditions vary.

The Court: You mean it depends on the type of fish?

The Witness: And the method of operating.

The Court: I see.

Mr. Schwartz: Your Honor please, at this time I should like to read to the jury certain portions from Exhibit No. 26, if I may.

* * *

Mr. Margolis: Your Honor please, it should be read in its entirety.

* * *

The Court: If you are going to read it you might as well read it all. [1256]

* * *

Bureau of Marine Fisheries—Statistics

* * *

Q. (By Mr. Schwartz): Mr. Scofield, how long have you been with the Bureau of Marine Fisheries, Division of Fish and Game, of the State of California? A. About 28 years.

Mr. Schwartz: That is all.

(Testimony of W. L. Scofield.)

Cross-Examination

By Mr. Margolis:

Q. Mr. Scofield, directing your attention to Government's Exhibit 26, which is the summary that you presented here today, are the figures there both with regard to pounds and dollars estimates, or are they accurate figures? [1260]

A. Well, that depends on what is meant by accuracy. You could not have complete accuracy in any such volume of records as that. I would not call it an estimate. It is based primarily on exact figures.

Q. Well, you refer in the exhibit to estimated pounds and value. Would you say that is a mistake?

A. Well, it is a meaning of terms. Ordinarily in popular language when we say an estimate, it is based on some figures but has a large degree of guesswork. I would say there was a very, very small degree of guesswork in these figures.

Q. Will you tell us what degree of guesswork there is in these figures?

A. That, I think, would be impossible. There are questions of interpretation of figures as we see them on a carbon copy: two people compiling, running up a column, one would call it a 6 and one would call it an 8; so you haven't complete accuracy, if you want to quibble on that point.

Q. That isn't the question of an estimate, is it; that is a question of simply correctly reading figures?

(Testimony of W. L. Scofield.)

A. There is an element of estimate in the value as already explained in my testimony.

Q. Isn't there, also, an element of estimate in the pounds?

A. Well, I would have to think about that. I believe [1261] not. I think that figure is the actual recording of pounds as shown on the tickets. I don't see where any estimating would come in there.

Q. Let's take, for example, the species barracuda—are all fish tags for barracuda caught in the areas as shown by Exhibit 26 included in the fresh market compilation?

A. You mean all the barracuda caught as recorded in the fresh fish markets?

Q. That is the practice, isn't it?

A. Yes, sir, it is the common practice; but there might occasionally have been some few pounds sold to a cannery. I couldn't say as to that.

Q. But all of it, whether some is sold to the cannery or not, all of it is included in the fresh market compilation, isn't it?

A. Well, if sales were actually made at a cannery, they would be excluded from this table. This table represents the sales made to the fresh fish markets.

Q. Are sales sometimes made to others than the canneries and the fish actually goes to the canneries for canning?

A. Yes, and that is usually recorded in our record as a resale ticket.

(Testimony of W. L. Scofield.)

Q. And the resale would be from whom to whom?

A. Well, for example, a mackerel landed at Santa Monica [1262] is trucked to the cannery, when the fish is unloaded at Santa Monica, the original ticket is made out, then when the cannery receives a truckload of mackerel from Santa Monica another ticket marked resale cannery ticket is made out.

Q. If a boatload of mackerel is brought in to Santa Monica and sold to a dealer there——

A. Yes.

Q. ——how is that listed in the report Exhibit 26?

A. The deduction of cannery fish trucked from Santa Monica would be subtracted from the market landing at Santa Monica. Otherwise there would be a considerable error in the market record for Santa Monica. [1263]

Q. Are you sure that those deductions have been made with reference to the figures on Government's Exhibit 26?

A. Well, that is our intention. A load or two may have been overlooked but we don't know that.

Q. Let's see if I can gather the method of computing these figures. All of the tickets from a particular dealer or, let's say, from all of the dealers in a particular area, as shown on Government's Exhibit 26, are gathered together and then the pound information and the dollar information

(Testimony of W. L. Scofield.)

where it is available on those tickets is added up, is that right?

A. Possibly I better explain the procedure. The tickets come in——

Q. Am I wrong in what I say?

A. Slightly.

Q. All right. Go ahead.

A. As the tickets come in from a dealer for the month, those are transferred to punch cards and then the punch card reports are run. Now a convenient way is to run the dealer reports first because the cards are grouped in that order.

Then they are later re-sorted and other reports run, for instance, the pounds of each species, and so forth.

Q. So that the original breakdown, as far as the dealers are concerned, is not by species but simply by pounds and dollar value for fish, is that right? [1264]

The Court: I do not understand what you mean by "breakdown." He said everything is put on the card and then they make a breakdown of what they want.

Mr. Margolis: I think the question was ambiguous, your Honor, and I will rephrase it.

Q. When you originally tabulate the amount and dollar value of the fish sold to the dealer, that tabulation is made without regard to species but is one single tabulation for all species, is that correct?

A. No, that is not.

Q. All right.

(Testimony of W. L. Scofield.)

A. It would have to be by species.

Q. Then you have originally a breakdown by species, is that right? A. Yes.

Q. Then for each species of fish you have a separate breakdown for each area as shown in Government's Exhibit 26 for each year, is that right?

A. Yes.

Q. And what you get then of total pounds as shown by these tickets and the dollars is where the tickets show it, is that right?

A. Well, it depends. If I understand you correctly. It is not made in just the way you indicate.

Q. Suppose you tell me how it is made then.

A. There are some six or seven, what we call, routine reports run from those cards after they are punched and verified.

Q. By "those cards" you refer——

A. To the punch cards.

Q. ——to the cards or the information which is obtained from the slips obtained from the fresh market dealers, is that right? A. Yes.

Q. Are those the cards you refer to?

A. Yes.

Q. Go ahead with your answer.

A. One of those routine reports shows the pounds of each species and the prices paid and from that we calculate the values, from that report. Now there will be some poundage there missing with no price, and that is where we do our averaging of price and carry out that extension.

Now information about a dealer or the amount of

(Testimony of W. L. Scofield.)

fish landed at any one dealer would be taken from another report, the dealer's report, which shows the pounds of each species handled by him during the month and the day.

The Court: Then do you make it up by boat too?

The Witness: Yes. There are two routine reports run showing the activity of the deliveries of each fishing boat in the state. That is the report in which we are most interested. [1266] One shows it in detail, the pounds of each species delivered each day. Another report summarizes that for the month.

The Court: By the way, how many fishing boats are there?

The Witness: There a little short of 4000. There are about 3,700, I would say.

The Court: How many fish canneries are there in the state?

The Witness: There are about a hundred.

The Court: How many fresh fish dealers in the state, do you know?

The Witness: No, I couldn't say.

The Court: Could you give an approximation?

The Witness: That would include a lot of these little scattered fly-by-night dealers and it would run into several hundred.

Q. (By Mr. Margolis): There are several hundred, as a matter of fact, here in Los Angeles alone, isn't that right?

The Court: Fresh fish dealers?

Mr. Margolis: Yes.

(Testimony of W. L. Scofield.)

The Court: You mean people who buy from the fishermen?

The Witness: Yes, that is the point. [1267]

Q. (By Mr. Margolis): Who buy directly from the fishermen?

The Court: Who buy directly from the fishermen.

The Witness: Yes.

Q. (By Mr. Margolis): How many are there?

A. You see, if fish goes into the fresh fish trade up here and is handled by several brokers, that is not our concern. We wouldn't count those in our list of dealers.

The Court: Your dealers are the ones who deal immediately and directly with the fishermen?

The Witness: Yes.

The Court: Beyond that you keep no statistical record or are not interested?

The Witness: No.

Q. (By Mr. Margolis): Do you know how many such dealers there are in the Los Angeles area? A. You mean brokers?

Q. No, dealers who buy part of the fish which they sell from fishermen who fish in the Southern California area.

A. I have had no occasion to check that recently. It would be just a wild guess. There are many people here who know better than I do.

Q. You have no basis for making an estimate?

A. No.

(Testimony of W. L. Scofield.)

Q. Now you said there were about 3700, approximately 3700, boats. Was that in California?

A. Yes.

Q. How many of those boats are located in Southern California as you have defined that area?

A. That is difficult because there is a great deal of migration back and forth. Oh, very roughly, I would say half the boats of the state are in the south.

Q. Of those how many are engaged in cannery fishing and how many in fresh market fishing?

A. I would say a larger number are engaged in the fresh market fishing.

Q. A larger number of boats?

A. Larger.

Q. In fresh market fishing than cannery fishing?

A. Yes, I would say so. For instance, when we had practically all of the purse seiners of the state here at San Pedro I believe that Newport had more boats than San Pedro.

The Court: What do you mean, the purse seiners were fishing for the canneries?

The Witness: Yes.

The Court: And the other people, the fresh fishermen are the smaller boats?

The Witness: The small boats at Newport I believe had [1269] more boats than any other port in the state.

Q. (By Mr. Margolis): There are a larger number of boats engaged in fresh market fishing. How about the number of fishermen?

A. Most of those small boats are one-man boats,

(Testimony of W. L. Scofield.)

and the larger boats carry a crew of 12 to 14, 16 men. However, the great number of small boats up and down the coast I would think that more fishermen are engaged in the small operation.

The Court: You mean the fresh fish?

The Witness: Yes.

Q. (By Mr. Margolis): Looking at the second page of this report——

The Court: Pardon me. You say there is a migration. That is to say, if they hear the sardines are running then the sardine fishermen up at Monterey go up to Monterey?

The Witness: Yes.

The Court: Or off of Mexico?

The Witness: In tabulating the boats we give a table in a more extended publication showing the boats that are centered in one port, but there are a considerable number of boats that fish a few months in one port, go to another part of the state through part of the season.

The Court: Fresh fish boats?

The Witness: Yes, they move up and down. That is particularly true of those fishing sharks in the past two years [1270] for the livers, and the trolling boats down here fish albacore and go north for the salmon season. There is quite a good deal of movement back and forth.

Q. (By Mr. Margolis): Before going on with the line of questioning I was pursuing, I want to get one thing quite clear. I am not sure I understand you.

(Testimony of W. L. Scofield.)

Referring again to Government's Exhibit 26, taking the first page, that is, the Santa Barbara region for 1945, the estimated pounds and value are respectively 4,543,000 pounds and \$551,500.

Down there at the bottom you have 1945 totals, including cannery species, 5,468,000 pounds and \$705,800.

Now the question I want to ask you is this: Were there 5,468,000 pounds of cannery fish caught in the Santa Barbara region in addition to the 4,543,000 pounds of fresh market fish, or in order to obtain the number of pounds and value of cannery fish, is it necessary to deduct the 4 million figure from the 5 million figure and the \$500,000 figure from the \$700,000 figure?

A. Well, I will confess that this note bothers me. However, the note has nothing to do with the question of what was landed at the fresh fish markets. It refers to cannery species and might better have been omitted from this page. [1271]

Q. Well, however it wasn't omitted, and I would like to find out what it means.

A. Well, the best way to do would be to check with one of our other publications to show what the total poundage was for this year in this area. Then there wouldn't be any question. [1272]

* * *

Q. (By Mr. Margolis): Would you be able to find out what that figure at the bottom means, whether that means that there were 5,000,000 pounds—I am just using the round figures—5,000,000

(Testimony of W. L. Scofield.)

pounds of cannery fish caught in Santa Barbara, or something less than 1,000,000 pounds caught?

A. It would be very easy to check that with our publication, and the figures speak for themselves.

Q. You could check that by telephone call, perhaps, so that you can give us that information?

* * *

The Witness: Yes, it might be that I could find it up in our Los Angeles office. I hope they have that publication.

* * *

The Court: By the way, do they have any canneries there—what are those towns listed on page 1?

Mr. Margolis: Santa Barbara, Morro—I will clear that up.

Q. (By Mr. Margolis): There are no canneries in the Santa Barbara region, are there?

A. No.

Q. What happens is there is some cannery fish caught there, sold there, delivered there, and then it is transported to [1274] the canneries in other areas by truck or other modes of transportation, isn't that true?

A. Yes, there is some from the Santa Barbara area.

Q. And it is true—what I have said is true, that it is transported by truck or some other means, it is landed in Santa Barbara or Morro or one of these other ports listed under Santa Barbara, and then transported by truck or some other way?

(Testimony of W. L. Scofield.)

A. There are deliveries from various points along the coast, trucked to a cannery.

Q. All right. I will have to come back and find out a little more about this.

Incidentally, you understood, did you not, Mr. Scofield, that what I want to find out relates not only to the first page of the exhibit, but to that figure where it is used on all three pages of the exhibit?

A. Yes.

Q. Are sardines a fresh market fish?

A. Do you mean by that none sold in the fresh fish market?

Q. Well, are there any, or what is the situation with regard to sardines?

A. There are small quantities sold on the fresh fish market.

Q. And very large quantities sold to the canneries, is [1275] that right?

A. A small fraction of one per cent of the sardine catch is sold in the fresh fish market.

Q. As a matter of fact, from the standpoint of pounds, sardines constitute a greater bulk than all the rest of the fish combined in Southern California, isn't that true?

A. Yes.

Q. Considerably greater?

A. Yes.

The Court: Southern California, or all up and down here?

The Witness: The State as a whole, the sardine catch as a whole is double the catch of all other species of fish put together.

Q. (By Mr. Margolis): And that would be

(Testimony of W. L. Scofield.)

true for Southern California and it would be true for Northern California, is that right?

A. No, it is less true of Southern California, because there is a higher percentage of other species landed here.

Q. But in Southern California it is still true that the number of pounds of sardines landed is greater than all other species combined, is that correct? A. Yes.

Q. And a very small fraction of one per cent of those sardines is sold to the fresh market dealers, isn't that so? [1276]

A. Well, several years ago I calculated that, and at that time it was a fraction of one per cent sold fresh.

Q. You don't remember how small a fraction?

A. No.

Q. The fish, the sardines which are sold to the fresh market, are sold for bait purposes, isn't that correct?

A. No. I was taking that strictly in the sense of consumed fresh. No, there is a considerable poundage sold for bait.

Q. There is a considerable——

The Court: To the fresh fish markets?

The Witness: Handled by the fresh fish markets that resell the sardines to fishermen for bait.

The Court: The less than one per cent is just consumed?

The Witness: That is to the actual markets that are selling to consumers, yes. But in the bait ques-

(Testimony of W. L. Scofield.)

tion, I would say that will bring the figure up considerably. It may be up to two per cent, I don't know.

Q. That is just a guess, is that right?

A. Yes, that is a guess.

Q. Are the sardines which are delivered to fresh fish dealers delivered to them by the large purse seines or by small boats?

A. Usually by small boats.

Q. Isn't it a fact that the small boats which deliver [1277] the sardines to the fish dealers do not have the large nets, and that they do their fishing close in, isn't that right?

A. Yes.

Q. So that as far as the fresh market portion of sardines is concerned, you have no evidence or knowledge that any portion of that is caught outside of the three-mile limit, isn't that so?

A. No, I think examination of the records would show that even the small boats make catches—some few catches outside the three-mile limit.

Q. Of sardines? A. Yes.

Q. Incidentally, you have talked about—what did you call them, zones, or blocks?

A. Block numbers.

Q. Yes, block numbers. What is the shape of one of these block areas—withdraw that. A block number is intended to indicate a particular area of water, isn't it?

A. Yes.

Q. Are they all the same shape or are they different shapes?

A. Well, they are somewhat different shapes

(Testimony of W. L. Scofield.)

where the land deducts from the original block. That is, it is a water area.

Q. It is a water area. How far out does that water [1278] area extend for each block?

A. Well, there are 10 minutes of latitude and 10 minutes of longitude. That means they are 10 nautical miles long north and south, and somewhat less than 10 nautical miles wide east and west.

Q. So if all you know about where a boat caught its fish is that it caught it within a particular block area——

A. Yes.

Q. ——you don't know whether it caught it within or without the three-mile limit, isn't that right?

A. Not quite right. Many of those blocks lie entirely within the three-mile limit. Some of them do. And——

Q. There are no blocks that lie entirely outside the three-mile limit, are there?

A. Yes.

Q. Are there blocks which lie entirely outside the three-mile limit?

A. Yes.

Q. I see.

The Court: How far out do you block your ocean for your statistical purposes?

The Witness: Out further than fishing boats ordinarily go.

The Court: In Southern California you block them out beyond the Channel Islands? [1279]

The Witness: Thirty or forty miles offshore. However, the blocks are larger out there, because

(Testimony of W. L. Scofield.)

there is very seldom a catch reported very far offshore. Twenty-five miles is usually the limit.

Q. In computing the amount of fish which is caught inside, as compared with outside the three-mile limit, how do you consider the fish which is reported as being caught in those blocks part of which is within the three-mile limit and part of which is outside the three-mile limit?

A. In the species in which we are most interested, that is obtained by questioning the fisherman as to how many miles he was offshore when he made his catch. Now, that wouldn't apply to all species. But the mackerel, sardines, and tuna, when the catch is sampled the person taking the samples of fish from the boat makes a point of interviewing the boat's captain to determine how far he was offshore, or in what part of the block he made his catch.

Q. How often is that done?

A. For instance, the sardine sampling is done now twice a week, and that means that some 10 or 15 captains are interviewed during the week as to where their catches were made.

Q. Are those captains who are interviewed captains of the canneries, or captains of the fresh fish wharves?

A. Mostly at the canneries.

The Court: Do sardines run in schools? [1280]

The Witness: Yes.

The Court: And do they follow a pattern up and down the coast?

(Testimony of W. L. Scofield.)

The Witness: Yes, there is a very distinct migration up and down the coast.

Q. (By Mr. Margolis): So the information that you have about where sardines are caught is primarily, if not exclusively, information concerning where the cannery fishermen catch their sardines? A. That's right. [1281]

Q. By the way, what percentage of the fishermen give information as to the blocks in which the ticket load of fish is caught?

A. That varies in the different parts of the state. Here in Southern California I think more than half of the fishermen give good locality reports.

Q. They trust each other more here than they do up North?

A. No, less so. The further north there are a good many fishermen of Scandinavian descent who take such records more seriously than in Southern California.

Q. Now these slips are filled out in the first instance by whom, by the fishermen or by the marketers? A. By the buyer.

Q. And the buyer obtains the information, or is supposed to obtain the information, from the fishermen with regard to where he caught his fish?

A. Yes.

Q. Do you know whether or not it is a fact that fish buyers very often simply fill in the information themselves without asking the fishermen, just speculating?

A. Yes. We have found cases of that sort. I

(Testimony of W. L. Scofield.)

think occasionally you will find a buyer who makes that a common practice.

Q. Of course in making your computations, you have no [1282] way of separating the slips from which the buyer filled in his information from what the fishermen told him and those in which he just simply filled in something which came out of his own head?

A. That is not correct. We do have a way of checking.

Q. What is the way?

A. That has already been explained, that in interviewing boat captains we find out where he actually did make the catch and we then can tell the market man who has deliberately guessed at a figure.

The Court: Is there an offense under the Fish Market Law for making false statements?

The Witness: Yes, that is a violation of the law. It is a falsifying of state records.

However, we don't believe in pressing prosecutions because we gain more through friendly cooperation than we do by a big stick. So after locality of catch and price and some of those questions we do not prosecute ordinarily, unless it is a flagrant violation.

Q. (By Mr. Margolis): As to the fishermen who don't give any information and for whom no information is filled in on the slip, you don't know where they catch their fish, is that right?

(Testimony of W. L. Scofield.)

A. Well, we have pretty good information from two or three sources. [1283]

Q. What are they?

A. Where the other captains tell us the fleet fished that night or that group of boats delivering at that port, and from reports and records of our own patrol vessels who are out in the fishing area at various hours during the day and night, we have a way of checking roughly. But of course it must be admitted that those figures of catch locality are much less exact than the record of pounds landed.

Q. And the figures on catch locality that you have do not distinguish between fresh market fish and cannery fish, do they? Aren't they based on species rather than who they are sold to?

A. Yes.

Q. So that let us say for example—let's take tuna as an example—some tuna is sold to the fresh market?

A. Yes.

Q. And some tuna is sold—by far the greater quantity of tuna is sold—to the canneries?

A. Yes.

Q. Some tuna is caught within the three-mile limit and some is caught outside the three-mile limit? Is that correct?

A. Yes.

Q. You have no records which show whether the fish caught within the three-mile limit—I will withdraw that. [1284]

You have no record which shows whether the fishermen who sell to the fresh market have caught

(Testimony of W. L. Scofield.)

tuna within the three-mile limit or outside the three-mile limit, do you?

A. Yes, we have a record. I think it hasn't been followed out. The catch locality record is shown on the ticket, which of course shows the name of the boat. Now we know to whom the boat delivered that night because it is shown on the ticket also.

Q. But from the figures you have given us, the only figures you have given, it is impossible to tell, is that right? A. Yes, I think so.

Q. And the same thing is true with regard to all species of fish which are sold in part to fresh market and in part to the canneries?

A. Well, it depends on what you mean by that. Of course some species are not sold to the cannery at all, some you would be practically certain they went to the fresh fish market.

Q. But my question didn't refer to those. I said that the same thing was true with regard to those species of fish which are sold in part to the dealers, fresh fish dealers, and in part to the canneries.

A. Yes.

Q. Now I wonder if we could—— [1285]

The Court: What do you mean, the same thing is true? That Exhibit 26 does not show it?

Mr. Margolis: That there is no information which actually shows which of the fish, how much the fish sold to the fresh market dealers came from inside or outside the three-mile limit, and the figure is an overall figure which includes both fresh market fish and cannery fish.

(Testimony of W. L. Scofield.)

The Court: In Exhibit 26?

Mr. Margolis: No, that isn't in Exhibit 26, your Honor. On that item, your Honor please, the witness testified as to the locality where the fish is caught. Exhibit 26 pertains to poundage and dollars total.

The Court: Yes, I know, but it is total poundage and it doesn't indicate whether it is inside or outside the three-mile limit.

Mr. Margolis: I am talking about the figures which the witness gave us, and he gave us by oral testimony some percentages of fish caught inside the three-mile limit and fish caught outside. It was to that that I had reference.

Q. You so understood me, did you not?

A. Yes.

Q. I wonder if you would go down the list of species of fish which are caught in Southern California and tell us which of those species are exclusively cannery species and which are exclusively fresh market species and which are sold [1286] to both the cannery and the fresh market.

A. Well, exclusive is a comprehensive term. There are some few fish sold of all the cannery species to the fresh fish markets, so there are none that are exclusively cannery.

Q. There are some cannery fish in which practically none is sold to the fresh fish market, though?

A. Very small amount.

Q. I wonder if you would so indicate in giving your answers in regard to the various species.

(Testimony of W. L. Scofield.)

A. Well, the cannery species are the sardine, mackerel and the five tunas, yellow fin, blue fin, albacore, skipjack and bonita.

Q. If I may interrupt you for just a second. With regard to those species which you have called cannery fish, will you go over each one and state whether any substantial amount is sold to the fresh market, those that you have just given us?

The Court: Do you want the percentage?

Mr. Margolis: The approximate percentage.

The Court: His last previous answer said all of them sold in some of the fresh fish markets.

Q. (By Mr. Margolis): If you can give us the approximate percentage.

A. We have covered the question of sardines pretty thoroughly. [1287]

Q. Yes.

A. A considerably larger percentage of the mackerel is sold fresh. It is also——

Q. Can you give us any kind of an estimate on that?

A. I haven't checked that. It would be easy to obtain that, I think, from the records.

Q. All right.

A. I think the same would be true of the tunas. I couldn't say offhand what percentage.

Q. When you say the same, you mean the same as of the mackerel?

A. As of the mackerel, yes.

Q. All right. Of all five tunas?

A. Yes.

(Testimony of W. L. Scofield.)

Q. Is there a considerable amount of albacore sold to the fresh fish markets?

A. Yes, quite an appreciable percentage. [1288]

* * *

W. L. SCOFIELD

called as a witness by and on behalf of the government, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination

(Resumed)

By Mr. Margolis:

Q. Have you had an opportunity to obtain the figures or information I requested with regard to Government's Exhibit 26?

A. Yes. In the lunch hour I phoned the laboratory, and Miss Connor was out, but a girl in charge there during her absence said that that note in thesis was the total fish received.

The Court: That is——

The Witness: The note in parentheses——

The Court: Included the fresh fish?

The Witness: Yes.

The Court: So that in Santa Barbara it would be 4,000,000 fresh fish and 1,000,000 for the canneries?

The Witness: Yes.

Q. (By Mr. Margolis): Looking at Government's Exhibit 26, if we want to get the total amount by pounds and by dollars of fresh market fish in the Southern California area, we would have

(Testimony of W. L. Scofield.)

to add these figures on the top of each of these three sheets together, is that correct?

A. For all of Southern California?

Q. Yes. A. Yes.

Q. So that we would have to take from Santa Barbara 4,543,000, is that right? A. Yes.

Q. And in dollars \$551,500. Then from the Los Angeles area 9,378,000 pounds, is that correct?

A. Yes.

Q. And in dollars, \$1,850,000? A. Yes.

Q. Then for San Diego region, 6,026,000 pounds, is that correct? A. Yes.

Q. And in dollars from that area, \$801,600, is that [1291] right? A. Yes.

Q. I get 19,947,000 pounds. Somebody can check my addition if they like; I won't vouch for it. But in any event if my addition is correct, that is the number of pounds—I have added the figures I have indicated—that is the number of pounds of fresh market fish from Southern California, is that right? If I have added this correctly, that would give me the total number of pounds? A. Yes.

Q. If I added the dollars correctly, it is \$3,-203,100. If we want to get the total, including fresh market fish, we would have to add together the figures down at the bottom of the page in parentheses, is that right? A. Yes.

Mr. Schwartz: Total of what?

Q. (By Mr. Margolis): Total of fresh market and cannery fish, all fish caught, is that right?

A. Yes.

(Testimony of W. L. Scofield.)

Q. This would include everything, there would be no exceptions? A. Yes.

Q. From Santa Barbara that would be 5,468,000 pounds, the Santa Barbara area? A. Yes.

Q. And in dollars, \$705,800? A. Yes.

Q. From San Pedro it would be 531,210,000 pounds? A. Yes.

Q. And in dollars, \$15,114,000, is that right?

A. Yes.

Q. And from the San Diego area 105,902,000 pounds? A. Yes.

Q. And \$11,250,000? A. Yes.

Q. I get 642,580,000 pounds. Again, if my addition is correct, that is the total number of pounds of fish caught in all the Southern California area, regardless of whether it is sold to canneries or fresh fish dealers?

A. Yes, I think there are no areas omitted from this.

Q. So that the total in dollars would be \$27,069,800, if my addition is correct?

A. Yes. [1293]

Q. Now if we wanted to find out how many pounds of fish were sold to the canneries, and how much in dollars that represents, we can subtract the first set of figures that I took up from the second and that would give us the cannery, is that right? A. I would think so.

Q. All right. Let's try that and see what happens. (Making calculation.)

So we get there, again if my computation is

(Testimony of W. L. Scofield.)

correct—I think it has been checked now—19,947,000 pounds of fresh market fish as against 622,633,000 pounds of cannery fish, is that right?

A. I believe so.

Q. And translating that into dollars—(making calculation)—and again I think those figures are correct, we find that the value of the fish sold to the canneries is \$23,866,700 as compared with \$3,203,100 sold to the fresh fish dealers.

As I understand the testimony, there are more boats, probably more men, fishing fresh fish than there are fishing cannery fish, is that right?

A. Yes.

The Court: While we are on those figures, is that the way you arrived at those figures there, by taking the total and deducting the fresh fish or taking the total and deducting [1294] the cannery fish?

The Witness: No. I think when this table was prepared they took the canneries and added up the amount of fish.

The Court: For the canneries?

The Witness: For the canneries. Then they took the various fresh fish markets and added up that fish, and the two then should equal the grand total. I think it was an actual compilation from dealers.

The Court: From the records?

The Witness: Yes.

The Court: Then if I understand you correctly, it wasn't just a subtraction from the total?

(Testimony of W. L. Scofield.)

The Witness: No, but it ought to be approximately the same.

The Court: For verification?

The Witness: Yes.

Q. (By Mr. Margolis): This certainly gives us the general picture, even if it isn't entirely accurate to the last dollar, is that right? A. Yes.

Q. Now I notice one thing that I think requires some explanation. The poundage of fish sold to the canneries is more than 30 times as great as the poundage of fish sold to the fresh market dealers.

Mr. Schwartz: If the Court please, I object to the question, or the statement of Mr. Margolis—I am not sure which it is——

Mr. Margolis: I haven't finished.

The Court: Right now I suppose it is argument, but let us let him finish his question and then we will rule on the objection.

Mr. Margolis: Maybe my multiplication is wrong, but I think it is right.

The Court: Roughly there is 20 million pounds of fresh fish and 450 million pounds of cannery fish.

Mr. Margolis: I said over 30 times the amount in pounds sold to the canneries.

The Court: Three times 20 would be 60. That is about right.

Q. (By Mr. Margolis): And about somewhere between 8 and 9 times the amount in dollars. How do you explain the fact that the amount in dollars is so much less per pound for cannery fish than it is for fresh fish?

(Testimony of W. L. Scofield.)

A. Well, the price of different species varies widely and the price within a season varies from month to month. Some of the cannery fish is very cheap. Sardines, for example.

Q. Sardines actually——

The Court: Let him finish his answer. [1296]

Mr. Margolis: I am sorry.

The Witness: The price of mackerel is considerably higher, somewhat higher. The price of tuna is very much higher.

The Court: Than mackerel?

The Witness: Yes. And certainly much higher than sardines.

Then the same is true of fresh fish. Rock fish, which looms rather large in parts of the season, sells at a very low price. Swordfish and some of the others sell at a higher price.

Q. (By Mr. Margolis): The basic reason for the discrepancy—I don't mean discrepancy in the sense that the figures are wrong, but for the difference in price per pound—is that so large a volume of the fish sold to the canneries are sardines, is that right? A. Yes.

Q. And the sardines sell at a very, very low price? A. Yes.

Q. Sardines are caught by these purse seines? They run in large schools, don't they?

A. Yes.

Q. And they are just large quantities of them that are caught at one time in these great big purse seine nets? [1297] A. Yes.

(Testimony of W. L. Scofield.)

Q. So that the catching of sardines as compared with the catching of large quantities of other fish are relatively easy and the price is low?

A. Yes.

The Court: While you are on that subject, the fish sold and caught for the fresh fish market commands a higher price per pound to the fisherman than the fish to the canneries?

The Witness: No, there is such wide variation. Some of the cannery fish, like the tunas, is pretty good priced. Sardines are very cheap.

The same is true of fresh fish. The rock fish sell at a low price and some of the other species do also.

The Court: As low as sardines?

The Witness: I have seen them at times when the sardine price hardly paid the fisherman to bring them in. Of course during the wartimes the price of all fish was up. I have seen rock cod sell at 1½ cents a pound, which hardly paid the fisherman to bring them in.

The Court: Is that recently? Is that in the last five years?

The Witness: Before the war.

The Court: Within the last five years?

The Witness: No, they wouldn't be that low in the last five years. [1298]

The Court: Within the last 10 years?

The Witness: Yes, within the last 10 years. Some of the market fish sell at a good price. So there is a wide variation in both the cannery and in the fresh fish.

(Testimony of W. L. Scofield.)

Q. (By Mr. Margolis): However, talking about this wide variation, it is true, is it not, that for each species of fish sold to the cannery the price for that species has been pretty well stabilized over the past seven or eight or nine years, is that not so?

A. Yes, that is true.

* * *

Q. You have seen from an examination of the tickets, have you not, that the price paid by the canneries to fishermen bringing in fish to them is the same price from day to day and week to week and month to month in the same year for the same species of fish, isn't that so?

Mr. Schwartz: Now, if the Court please, I object to the question on the ground it is incompetent, irrelevant and immaterial to the issues in this case. The indictment charges [1299] a conspiracy involving a violation of the Sherman Act in regard to the commerce of fresh fish and not cannery fish. I think the examination of this witness to the extent that it has gone along has been somewhat out of line, but I haven't seen fit to object because I didn't think it particularly mattered one way or the other. But I think at this point we ought to call a halt to it. What the canneries pay fishermen for cannery fish, whether it be sardines or tuna or any other fish, has nothing to do with the charges brought by the Government in this suit. [1300]

* * *

Mr. Schwartz: I object on the further ground that whatever price the canneries pay to fishermen

(Testimony of W. L. Scofield.)

for fish has nothing to do with the issues in this case. [1301]

The Court: That is the ground you stated before.

No, I don't think it has, counsel. The objection is sustained.

Mr. Margolis: Will I get an opportunity to state our position on that?

The Court: Pardon me?

Mr. Margolis: Will I get an opportunity to state our position on that?

The Court: I think you have stated it. I think that is one of the first things you stated in connection with this case. Do you remember you spent some time telling me the things of which I should take judicial notice?

Mr. Margolis: But I didn't talk about cannery fish at that time.

The Court: The objection is sustained.

Mr. Margolis: We have reasons that have not been presented, your Honor. I would like an opportunity to present them.

The Court: No, the objection is sustained.

Mr. Margolis: I would like to make an offer of proof as to what the answer would be.

The Court: I think that is immaterial. Whatever his answer is, it is immaterial.

Mr. Margolis: For the sake of the record I think we have a right to make an offer of proof, even though your Honor rules it is immaterial, then the offer can be rejected. [1302]

(Testimony of W. L. Scofield.)

The Court: You can reserve it until recess time and make it out of the presence of the jury.

Q. (By Mr. Margolis): As to fresh market fish, is it not a fact that there is for the same species of fish, and during the same month in any year, a great range of prices paid. A. Yes.

Q. For example——

The Court: At the same port?

The Witness: Yes.

Q. (By Mr. Margolis): And by the same dealer, is that right? A. Yes.

Q. For example, during one month fish like barracuda could run from low price of three cents per pound to maybe a high price of 13 or 14 cents per pound, is that right?

A. Yes, I believe barracuda has a wider range than most species.

Q. Well, take halibut, ranges run some times from 5 cents to 14 or 15 cents, isn't that right?

A. I feel that I am not qualified to answer specific questions as to the price of different species, because I have not been interested in price. I do know there is considerable range in fresh fish prices from week to week.

Q. So that when you estimate the price of the fresh [1303] fish with regard to those tickets for which no price is given, then you use an average which covers a wide range of prices generally, isn't that right. A. Yes.

Q. But when you don't get the information on the cannery fish, then there really is no estimate necessary because the price is the same all the time?

(Testimony of W. L. Scofield.)

Mr. Schwartz: I object to the question on the ground it includes a statement not in issue. There has been no evidence that the cost or value of cannery fish is taken into account when evaluating the cost of fresh fish.

Mr. Margolis: They put in the exhibit, and the exhibit is based in part upon an estimate, as this witness testified.

Mr. Schwartz: I object to that statement on the ground that it is not so.

Mr. Margolis: The exhibit has that information on it.

Mr. Schwartz: But not Mr. Margolis' testimony.

The Court: I don't think that the portion of the exhibit is material that relates to that cannery fish down there. It is on the exhibit, they offered it——

Mr. Margolis: They offered it, and certainly——

The Court: Just a minute. But I don't think in connection with the issues as framed by the indictment here and the pleas of the defendants of not guilty to it that the price or quantity of cannery fish is in issue or material. [1304]

Mr. Margolis: I just want to say this, your Honor: the evidence went in without objection, and I should be allowed to cross-examine on that point. It seems to me if they put in the exhibit we ought to be allowed to cross-examine on that exhibit.

The Court: That's right. The objection will be overruled.

Mr. Margolis: Will you read the question, please.

(The question was read as follows:

(Testimony of W. L. Scofield.):

“Q. But when you don’t get the information on the cannery fish, then there really is no estimate necessary because the price is the same all the time?”

The Witness: Yes, qualified: there is some variation in cannery fish. Your statement was very flat that it was the same all the time.

Q. (By Mr. Margolis): It is a very, very slight variation?

A. It is quite stable, yes.

The Court: Is it slight or is it stable?

The Witness: There is some variation as the result of labor disputes, or whatever, there are some changes in cannery prices. His statement was that it remained the same absolutely. There is a little change in cannery prices.

Q. (By Mr. Margolis): From year to year, is that right?

A. Yes. Sometimes within a season. [1305]

Q. There might be one change within a season, is that right?

A. One, or possibly more. But is quite stable compared with fresh fish prices, yes.

Q. You don’t have a situation where it changes from day to day?

A. No.

Q. It is also true, is it not, that from year to year there is a great variation in the availability for harvest of particular species of fish?

Mr. Schwartz: I object unless the type of fish is stated. I don’t mean type; I mean fresh fish or cannery.

(Testimony of W. L. Scofield.)

Mr. Margolis: I assume when a barracuda is going to be caught it doesn't know whether it is going to be sold to the fresh market or the cannery.

Mr. Schwartz: I assume the fisherman who goes out for it knows.

The Court: The testimony is that the fresh fish market is different than the cannery. Objection sustained.

Q. (By Mr. Margolis): There is some tuna which is sold to the fresh fish market, is that right?

A. Yes.

Q. So availability of tuna for harvest by the fisherman varies greatly from year to year, doesn't it?

A. Yes.

Q. And the cause for that variation is something which is pretty much an unknown factor, isn't it?

A. Yes.

Q. And that is true of all other species of fish, is it not?

Mr. Schwartz: Again I rise to make the same objection, unless we know if we are talking about fresh fish or canned fish. There is a difference, and I submit that the question——

The Court: The objection is overruled. I think everybody can take judicial notice of the fact that fish don't run the same every year. I am no commercial fisherman or professional fisherman, and I know that.

Mr. Schwartz: I am willing to stipulate that.

Mr. Margolis: We will accept the stipulation, and I will withdraw the question.

(Testimony of W. L. Scofield.)

The Court: They don't run the same every year or every month, or the same time of the year.

Mr. Margolis: I have here a document headed, State of California, Department of Natural Resources, Division of Fish and Game, Circular No. 20, Statistical Report on Fresh and Canned Fishery Products Year 1945, Sardine Canning and Reduction Plants Report, which I will ask be marked for identification, your Honor.

The Court: G?

The Clerk: G is right. [1307]

The Court: It may be marked.

(The document referred to was marked Defendants' Exhibit G, for identification.)

The Court: Is this a public document?

Mr. Margolis: It is my understanding that it is, your Honor. I will ask the witness.

The Court: Let me see it.

(The document was handed to the court.)

Q. (By Mr. Margolis): This document which I just described, and which I show you, sir, is a publication as indicated of the Bureau of Marine Fisheries? A. Yes.

Q. That is the bureau with which you are connected or employer? A. Yes.

Q. On page 3—pages 1 and 2 are missing—

Mr. Margolis: Do you have a complete copy there, counsel?

(Testimony of W. L. Scofield.)

Mr. Schwartz: Apparently this is page 1 at the top.

Mr. Margolis: I see. Then, pages 1 and 2 aren't missing. Apparently page 1 is the cover page and page 2 is the inside of the cover page.

Q. (By Mr. Margolis): Then on page 3 there is a chart headed, California Fresh Fishery Products For the Year 1945. Now, that chart purports to show, does it not, in terms of pounds the fish caught and sold during the year 1945 in the [1308] various areas of California?

A. Yes.

Q. And it is broken down by species?

A. Yes.

Q. I notice that there is one subtitle "Total Fish in Pounds," then below that—or above that there are a number of species of fish, starting with albacore, anchovy, barracuda, et cetera., then below that there is "crustacean," which consists of three types: crab, lobster (spiny), and shrimp. Below that there is "mollusk," which consists of abalone, clam, et cetera. First of all I want to ask you whether the figures on Government's Exhibit 26 is total fish in pounds including crustaceans and mollusks, or is just the total fish excluding crustaceans and mollusks?

A. I think when this table for 26 was prepared that mollusks and crustaceans were omitted. That is my general recollection. This publication is a preliminary publication to show the results of the previous canning season for the season 45-46.

(Testimony of W. L. Scofield.)

Q. The same period that is covered by Government's Exhibit 26?

A. No, the primary object of this publication——

Q. Excuse me. I don't mean the object, I mean the period, the period of time is the same.

The Court: I think he is trying to answer that the object would require a different period. Go ahead.

The Witness: I am putting in information that was not directly asked here.

The Court: Then the objection is sustained.

Mr. Margolis: I am certainly going to give you an opportunity to explain in full, but if you will answer my questions one at a time I think we will get along better.

Q. First of all, I want to know whether the period of time covered by this table in the chart which is a part of the pamphlet marked Defendants' Exhibit G and the period of time covered by Government's Exhibit 26 are the same.

A. Yes. The chart on page 3 is the calendar year 1945, as is Exhibit 26.

Q. Now there are a number of areas shown on page 3 of Exhibit G, one of which is Santa Barbara, and I ask you now this, whether the area Santa Barbara as used on Defendants' Exhibit G is the same area as the area Santa Barbara referred to on Government's Exhibit 26 .

A. I think it is.

Q. Do you know of any differences?

A. No.

(Testimony of W. L. Scofield.)

Q. It is the same?

A. I assume from this table that all of Santa Barbara region was included.

Q. And all of Santa Barbara region would be included in Exhibit G.

A. It is there, yes; quite definitely.

Q. Now you were going to explain, and I want you to explain now, what differences, if any, there are with regard to the place from which the statistics were gathered for Defendants' Exhibit G and Government's Exhibit 26.

A. There is a difference because this publication coming out usually around March is a preliminary report to show the cannery pack in meal, in cases and in oil, and this preliminary table of fish catch for the year is printed at that time.

For the dribbling along through the rest of the year are supplemental reports that come in from some of the scattered dealers, so that later tables are a somewhat higher figure. The percentage of error in this preliminary table—the percentage of omissions I should say rather than error—is small. There are supplemental figures that come in and then this table is printed.

Q. How high would the difference of percentage be, 5 per cent, 10 per cent?

A. I wouldn't expect it to exceed 5 per cent. There may be cases where there would be a larger amount reported than got into our preliminary table.

(Testimony of W. L. Scofield.)

Q. But you wouldn't expect it to be over 5 per cent?

A. Not ordinarily.

Q. I notice that the total amount of fish shown on Exhibit G for Santa Barbara for the year 1945 is 3,384,426 pounds, whereas on Government's Exhibit 26 it is 4,543,000 pounds, or a difference of more than 20 per cent. How do you account for that?

A. Well, in this table on page 3 the total, including crustaceans and mollusks, is very close to this original figure.

Q. Well, then, does—I thought I understood you to say——

A. I was under the impression that this table probably did not include the mollusks and crustaceans. This table does not naturally. What this total was taken from, I can't be sure.

Q. Let us see if we can get this straight.

A. However this comment here in parenthesis has no bearing on this.

Q. You keep saying "this" and "this," and for the record and the jury it is not at all clear what you are referring to. I want you to go back and make it clear.

Suppose you give me your answer again and when you say "this" point to which table you are pointing to, identify it, so that your answer will be understood.

The Court: Identify it by exhibit number instead of "this" and "this" and "these" and "those."

(Testimony of W. L. Scofield.)

The Witness: The table for Exhibit 26 was prepared to show the fish delivered to the fresh fish markets.

Q. (By Mr. Margolis): Well, crustaceans and mollusks are delivered to fresh fish markets, aren't they?

A. Yes, they are. Now whether that table includes mollusks and crustaceans I am not sure now.

Q. You don't know?

A. No.

The Court: Do the canneries buy mollusks and crustaceans?

The Witness: No, not ordinarily.

The Court: To can?

The Witness: I will take that back. They do at Monterey.

The Court: Do they in Southern California?

The Witness: I think not. There might be exceptional cases. They can squid at Monterey, which is a mollusk.

The Court: But they do not can other crustaceans, do they?

The Witness: No. [1313]

Q. (By Mr. Margolis): The table on Defendants' Exhibit G continues on page 4 and 5.

A. Yes.

Q. Only giving areas that are not given on page 3, is that correct.

A. Yes.

Q. I notice on page 4 of Defendants' Exhibit G—that is the published pamphlet—there is a refer-

(Testimony of W. L. Scofield.)

ence to Los Angeles region, whereas page 2 of Government's Exhibit 26 refers to a San Pedro region. Can you explain the difference in terminology?

A. No, the two terms we use rather interchangeably. San Pedro is the harbor of Los Angeles, that is all.

Q. Well, as a matter of fact, though, the region is generally referred to as the Los Angeles region because it includes harbors in the Los Angeles area other than San Pedro, isn't that a fact?

A. Well, our region covers a wider area than just that harbor. In our informal conversation we refer to it as the San Pedro region because San Pedro is the harbor. But in more formal published reports it is called the Los Angeles region.

Q. The Los Angeles region is the more accurate term, is it not? [1314]

A. It is the more formal term.

* * *

Q. (By Mr. Margolis): Now I notice that the total on Exhibit G for the Los Angeles region, including crustaceans and mollusks, is 421,951,884 pounds, whereas on Government's Exhibit 26 the total is 531,210,000 pounds, or about 110,000,000 more pounds on Exhibit 26. Can you account for that?

A. Yes, that is something of which we are somewhat ashamed. The original table, the first table that came out, did not include a considerable quantity of albacore that was not reported to us. Those

(Testimony of W. L. Scofield.)

tickets were allowed to accumulate on buyer barges anchored off the coast. Our patrol was somewhat negligent in checking over that state of affairs and [1315] those tickets came in later and were included in our final tables.

Q. 110 million pounds of fish caught on those barges?

A. Yes. It amounted to this, that our preliminary figures on albacore were only—oh, somewhere in the neighborhood of two-thirds of what was actually caught. Those records came in later and we added it to our final tables.

Q. You say your preliminary figures were about two-thirds of the actual amount caught?

A. In albacore, I believe, or at least for a period of the year. I don't know as it would be true for the whole year.

Q. Let's look at the San Diego region then. The San Diego region on Exhibit G is the same region as is referred to on the third page of Government's Exhibit 26, the San Diego region, is it not?

A. Yes.

Q. Did you have the same kind of an error in San Diego?

A. That is where most of the difficulty arose. The principal buyer barges were anchored off San Diego and the failure to turn in the records partially accounts for the low figure in the preliminary table.

The Court: That is the printed table?

The Witness: Yes.

(Testimony of W. L. Scofield.)

The Court: Exhibit G? [1316]

The Witness: Yes.

Also there was considerable transferring of fish from one dealer to another and from one region to another which had to be corrected later by what we call resale tickets.

Q (By Mr Margolis): The total shown on Exhibit G for San Diego is 11,674,000-odd pounds, is that right? A. Yes.

A. Yes.

Q. Whereas on Government's Exhibit 26 it is 105,902,000 pounds, a difference of over 90 million pounds.

The Court: That is for San Diego?

Mr. Margolis: That is what these exhibits show, your Honor.

The Witness: Apparently so.

Q. (By Mr. Margolis): Let's see if I get this straight. The total albacore shown for San Diego is 2,272,369 pounds. Do I understand you to mean that that figure should be somewhere close to 100 million pounds of albacore in San Diego?

A. I mentioned albacore because there was the greatest discrepancy in that species in our records, the late records coming in. Undoubtedly the same trouble applied to some of the other species.

Q. What other species?

A. Some of the tunas. Starting in 1945—Incidentally, [1317] there was a good deal of trucking from one region to another—we didn't exercise the

(Testimony of W. L. Scofield.)

close field check during that year that we would normally, due to a shortage of personnel, so that much of that had to be straightened out afterwards in the making out of the resale tickets.

A. Mr. Scofield, I am afraid I don't quite understand this yet. The total tuna and albacore shown for San Diego on Exhibit G is less than 5 million pounds, is it not, taking all species of tuna together?

A. I hadn't computed that.

Q. Suppose you just take it approximately. We don't want to bother getting the exact figure, but it is considerably less than 5 million, isn't it?

A. Of all five tunas?

Q. Of all five tunas for San Diego.

A. Well, maybe.

Mr. Schwartz: If the Court please, I think we can shorten this proceeding if Mr. Margolis would direct the witness's attention to the note at the bottom of page 5.

Q. (By Mr. Margolis): Is there anything in the note that helps you?

The Court: What does the note say?

Mr. Margolis: There are a lot of items in the note.

Mr. Schwartz: "The record does not include (1) albacore shipped from Oregon and Washington, (2) fish imported from [1318] South America or (3) from the Gulf of California."

Q. (By Mr. Margolis): Does Government's Exhibit 26 include fish shipped from Oregon and Washington and from other places?

(Testimony of W. L. Scofield.)

The Court: Do you mean the cannery fish or the fresh fish?

The Witness: Fresh fish.

Q. (By Mr. Margolis): Do you mean to say that Exhibit 26 includes albacore shipped to the Los Angeles region from Oregon and Washington and from South America?

Mr. Schwartz: Or from the Gulf of California, that is, Mexico.

The Court: Is albacore fresh fish?

Mr. Margolis: I thought so.

The Court: Limiting it to albacore now, he testified most albacore goes to the canneries and the other places. Does that first figure on Exhibit 26 indicate fish shipped in from those states?

The Witness: There is no indication on this table as to whether or not any shipments in are included.

Q. (By Mr. Margolis): As a matter of fact, you stated this was just fish caught.

The Court: Yes, that is what the witness stated.

Q. (By Mr. Margolis): Isn't that so?

A. That would be the ordinary interpretation of fish caught locally, but the table may include some stuff shipped in. I am sure I can't remember now.

Q. So this table may include fish shipped in from Oregon and Washington?

A. I wouldn't think so, but I can't be sure. That table was made up some months ago and I

(Testimony of W. L. Scofield.)

don't recall now. The table should state whether any imports are included or not, but it doesn't.

The Court: Does the cannery total there include fish brought in or is there any fish brought in to be canned here?

The Witness: The cannery totals would show a good deal brought in.

The Court: From South America?

The Witness: Yes, from south of the Mexican line.

Q. (By Mr. Margolis): So that as far as you know, this Exhibit 26 which was introduced by the Government to show fish caught here may include fish shipped in, is that right?

A. It might. I would have to check those figures.

The Court: How much fish was shipped in? It doesn't show in that Exhibit G, does it?

The Witness: G is that printed table? [1320]

The Court: Yes. Do you have G there?

(The document referred to was passed to the witness.)

The Witness: The note says that this printed table does not include albacore from Washington and Oregon or fish imported from South America or from the Gulf of California.

The Court: That is albacore only, is that right?

The Witness: No. 1, it does not include albacore shipped in from Washington and Oregon or fish imported from South America or from the

(Testimony of W. L. Scofield.)

Gulf of California. Apparently from the wording of that it includes the **regular landings from the** west coast of Mexico.

The Court: In other words, the fish brought in here caught by people who leave here?

The Witness: There is a further note: "Shipments received at California canneries from north of the state boundary were as follows," and then it gives those figures. So they were not included in the table. That footnote merely adds those that came from Washington and Oregon. So that table does not include those coming in from Washington and Oregon.

The Court: Does Exhibit 26?

The Witness: Well, I would think not, but, as I say, I can't recall now.

The Court: Do you have that in your records?

The Witness: Yes. [1321]

The Court: Don't you take it from the fish tickets?

The Witness: Yes, we could check it from there.

The Court: Do you get fish tickets from Washington and Oregon and Mexico and South America?

The Witness: No.

The Court: I thought you said these records were made up from the fish tickets.

The Witness: They are, but an importer bringing in fish by truck, for instance from Oregon, makes a ticket there, a resale ticket. That truck-load is not a delivery.

The Court: That is a resale ticket?

(Testimony of W. L. Scofield.)

The Witness: Yes. It is not the delivery of a fishing boat.

The Court: I understood you to state that this did not include resales, that resales were deducted on this when you made up your general table and statistics.

The Witness: Well, where the resale would lead to a duplication it is deducted, but where it is not included in a regular boat ticket why it is included because it is fish processed here in this state. It was landed here by truck rather than by fishing boat. We call it a resale ticket because it is not a boat delivery.

The Court: Let me ask you now: On Exhibit 26, does that or does that not include fresh fish brought to any of the markets indicated by means other than by boat? [1322]

The Witness: Well, that is the difficulty. I couldn't remember whether any other fish was included than boat deliveries.

The Court: Do you recall now?

The Witness: No, I don't. The table should state just what it does include. My first impression was that it did not include anything from outside, but it may. I can't testify as to that now.

The Court: Do you have any way of telling how much from outside?

The Witness: We would have to check our records to see whether or not those figures are included.

The Court: Would it be the difference between

(Testimony of W. L. Scofield.)

3 million, that counsel asked you about a while ago concerning the Santa Barbara area, and 4 million pounds?

The Witness: I think not. I think it would be no such figure as that.

Mr. Margolis: I have no further questions.

The Court: Mr. Garrett?

Mr. Garrett: No questions.

Mr. Schwartz: I just have a couple of questions on redirect.

Redirect Examination

By Mr. Schwartz:

Q. You were asked about the State price of fish, and discussed that. I will ask you whether the price of fish has any relation to the supply and demand as it may exist at any given date?

Mr. Margolis: I object to it on the ground that there is no foundation laid to qualify this man as an expert on that subject.

Mr. Schwartz: If the court please, it was a matter that Mr. Margolis went into on cross.

The Court: Overruled. That is the price of fresh fish or canned fish?

Mr. Schwartz: Fresh fish.

Q. Does the price of fresh fish have any relation to the law of supply and demand as it may be on any given day or date as indicated by those tickets which you have?

A. Well, that is a difficult subject. As indicated by the tickets?

(Testimony of W. L. Scofield.)

Q. We are talking about the price of fish that you know about as you get on those fish tickets. Is the price of [1324] any species of fish determined as of that date by the law of supply and demand? If there is a long supply does it differ from the time when the supply is short, if you can answer that question?

A. Yes, but taking the variable barracuda as an example, I have known of cases where the price was high at the beginning of the day, a large load brought in and the price dropped within a few hours.

Q. Does the table in G, for identification, where it talks about fish that comes in from the Gulf of California, would that include the fish as brought in by those clippers that go out of the Port of San Diego or any of the Los Angeles ports?

A. No. The boat deliveries would go in on our regular table. That refers to fish trucked in, principally Mexican sea bass or totauwa.

Mr. Schwartz: That is all, your Honor.

Mr. Margolis: Your Honor, there has been an entirely new subject opened and it is going to be a long time now. I will be 20 minutes or maybe a half hour on this subject, so we might take our recess.

The Court: A new subject? I didn't know there was. If there would have been I wouldn't have permitted it.

Mr. Margolis: It was about his opinion as to the effect upon prices of the law of supply and

(Testimony of W. L. Scofield.)

demand. I have a [1325] lot of questions on that subject.

The Court: Yes, I know, you raised the question in your cross-examination.

Mr. Margolis: I didn't think I raised the relationship between the law of supply and demand.

The Court: You raised what caused the variation in the price of fish, and he had a right to examine him on redirect. If your cross examination goes to that, counsel, it is not admissible. If it goes only to that, I will sustain any objection.

Mr. Margolis: I am going to direct myself to the specific question which this witness was asked, and to that particular item. Certainly I have a right to cross examine him on that question.

Mr. Schwartz: I will object to it, your Honor, on the ground it was matter brought out on cross examination.

The Court: The question permitted on redirect to which you objected, the objection was overruled because he touched a new subject which you had brought out on cross. When you had the witness on cross you exhausted your subject matter on that.

Mr. Margolis: May I put my question?

The Court: We can't go back and forth between the attorneys on the same subject matter.

Mr. Margolis: May I put my question for the record, [1326] then, your Honor?

The Court: Yes, put your question for the record.

(Testimony of W. L. Scofield.)

Recross Examination

Q. (By Mr. Margolis): When you testified in response to a question put by government counsel that the price of fish does have a relationship to the law of supply and demand, were you referring to a day-by-day period, a week-by-week period, a month-by-month period, a year-by-year period, or any other period?

Mr. Schwartz: I object to the question on the ground that it is improper recross examination, because it was matter brought out on cross examination and gone into on redirect.

The Court: No, I don't think that question was. He is referring to a specific answer and asking him on that question. Objection overruled.

You remember the question?

The Witness: Yes.

The Court: Counsel, obviously his answer was self-contained, and the question is not appropriate for the answer that he gave. He said: I know of a day when barracuda came in and before the end of the day the price went up.

He wasn't referring to year-by-year. I will sustain an objection on my own motion on the ground it is complex and compound. [1327]

Q. (By Mr. Margolis): Were you limiting your answer to variations in price on a day-to-day basis?

Mr. Schwartz: I submit that the answer that he gave, if the court please,—I object to the question on the same ground.

(Testimony of W. L. Scofield.)

Mr. Margolis: One more thing, your Honor. I would like to have one minute, if I may, on the subject matter of the last examination out of the presence of the jury. I don't want to argue it before the jury. I just want to make this point.

I think that your Honor had reference in your ruling or your indication on the matter that you would rule on the line of questions, to some questions that I ask on cross examination with relation to variation in prices.

The Court: That is right.

Mr. Margolis: I would like to direct your Honor's attention to the fact that the variation in prices or lack of variation in prices went directly to the issue of the exhibit in evidence. It doesn't have anything to do with the law of supply [1330] and demand. As a matter of fact, the only basis on which I was able to show that there was no variation with regard to the canneries was in connection with that exhibit.

Now we have had a question which, as a matter of fact, this witness is qualified as an economic expert upon the relationship between supply and demand upon prices. The mere fact that prices change is one thing, the fact that there is a relationship between supply and demand upon prices is another thing. One is a matter of fact, to which anybody can testify who has the knowledge, the other is a matter of expert testimony.

The Court: You examined him upon the matter. You asked him about his opinion, if it wasn't true

(Testimony of W. L. Scofield.)

that cannery prices remained the same and that other prices varied.

Mr. Margolis: I asked him about a fact, your Honor.

The Court: You asked him about a fact, I know, but like our other expert, Dr. Robinson, he wasn't giving his opinion, he was giving facts.

Mr. Margolis: But, your Honor please, I was asking him what the tickets showed. I wasn't asking him whether there was any relationship between this and an economic fact. Anybody who has seen those tickets could have testified as to the fact. Anyone who could read English and had seen those tickets could. It takes an expert, it takes an economist, to testify about the effect of the law of supply and demand [1331] and I think the field has been opened up. That is why I object on the grounds that there was no foundation because I thought that was a question which required an expert to answer.

Now apparently he has been offered here as an expert. He testifies about the law of supply and demand, and an economist has a right to testify about that, but a man who is not familiar with the field I submit is not qualified.

Mr. Schwartz: Your Honor, this man is not here as an expert economist, he is here as a biologist.

The Court: If that is the case, the last answer he gave to your question should be stricken, because you asked him his opinion as to the law of supply and demand.

(Testimony of W. L. Scofield.)

Mr. Schwartz: I must submit that he is not here as an economist. I think he gave his title as a biologist, and he said, as a matter of fact, he was not familiar with prices and didn't care about prices.

The Court: We will strike his answer.

Mr. Margolis: One thing that has happened in this case, again and again, has been that the government has offered testimony, exhibits, and then tried to back away from what they——

* * *

LYNN EVANISEVICH

called as a witness by and on behalf of the government having been first duly sworn, was examined and testified as follows:

The Clerk: May I have your name?

The Witness: Lynn Evanisevich.

The Clerk: Your address?

The Witness: 734 Fourteenth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. How is your name pronounced?

A. Evanisevich.

Q. Miss Evanisevich, by whom are you employed?

A. By Local 33.

Q. Will you keep your voice up, please?

(Testimony of Lynn Evanisevich.)

A. Local 33, International Fishermen.

Q. Where are they located?

A. Berth 73, San Pedro.

Q. For how long have you been so employed?

A. About six years.

Q. Do you know Mr. Gilbert Zafran, one of the defendants in this case? A. Yes.

Q. Do you know by whom he is employed?

A. Yes.

Q. By whom is he employed?

A. Local 36.

Q. And is Local 36 and Local 33 located at the same office in Berth 73? A. Yes.

Q. Do you perform any duties for Mr. Zafran at Local 36? [1341] A. At Local 33.

Q. At the place of the office where Local 33 and 36 are located, do you perform any duties there for Mr. Zafran? A. Yes, I do.

Q. What are those duties?

A. Typing, mostly.

Q. Typing, mostly? A. Yes.

Q. Anything else? A. Phone work.

Q. You handle his office matters there, do you, in connection with typing and answering the phone, and so forth? A. Yes.

Q. What kind of documents are given to you, Miss Evanisevich, by Mr. Zafran for typing. Does he dictate to you or does he give you the handwritten documents?

A. Mostly handwritten.

(Testimony of Lynn Evanisevich.)

Q. And when he gives you those handwritten documents, what do you do with them?

A. Type them.

Q. And then what happens to the handwritten document?

A. We throw them in the basket.

Q. What happens to the typewritten documents—are they filed in the files of Mr. Zafran?

A. They are given to Mr. Zafran. [1342]

Q. And they are filed in the files of Local 36, are they? A. I imagine, yes.

The Court: Do you keep the files of Local 36?

The Witness: We don't do much filing for Local 36.

Q. (By Mr. Rubin): They don't have a very large establishment there, do they? A. No.

Q. I see. All right. Do you type letters for Mr. Zafran or copy letters for him? A. Yes.

Q. When meetings are held do you copy the minutes of the meetings that are submitted to you by Mr. Zafran? A. Yes.

Q. I see. And were you so engaged during the year 1946, Miss Evanisevich? A. Yes.

Q. Who else does the same kind of work that you do there?

Mr. Garrett: That is assuming facts not in evidence.

Q. (By Mr. Rubin): If anyone? Do you have any assistant or associate who does the same kind of work that you do there?

A. Just another girl in the office.

(Testimony of Lynn Evanisevich.)

Q. What is her name?

A. Stella Narducci. [1343]

Q. Stella Narducci? A. Yes.

Q. N-a-r-d-u-c-c-i? Is that correct?

A. Yes.

Q. I show you what has been marked as Government's Exhibit 236, for identification, and ask you if you have ever seen that document before.

A. Yes, it has my initial on it.

Q. Will you keep your voice up, please?

A. Yes.

Q. It has your initial on it? A. Yes.

Q. Was this the document that you copied for Mr. Zafran? A. I don't remember.

Q. What dictation symbols are opposite your initial? A. GZ.

Q. That is followed by what? A. "le."

Q. Using that to refresh your recollection, can you tell us who gave you that document to copy?

A. It would appear to be GZ.

Q. And is it customary for you to put—

The Court: Who is GZ?

The Witness: Gilbert Zafran.

Q. (By Mr. Rubin): Is it customary for you to put the [1344] initials GZ or the initials of the person who dictates the document to you before your own initials? A. Most always.

Q. You have seen Mr. Zafran's signature many times, have you not? A. Yes.

Q. I call your attention to the signature appearing on Government's Exhibit 236, for identi-

(Testimony of Lynn Evanisevich.)

fication, and ask you if that is Mr. Zafran's signature.

A. It looks like it. I wouldn't say definitely.

Q. It looks like Mr. Zafran's signature, is that correct? A. Yes.

Q. Is there anyone else there who signs Mr. Zafran's name to any documents in your office?

A. At times, I believe.

Q. Who?

Mr. Andersen: May we see that letter, Mr. Rubin? We don't have a copy of that.

Mr. Rubin: You have a copy of all of these, counsel.

Mr. Andersen: Not of that one. This is one of about four we don't have copies of.

The Court: Read the question to the witness.

(The record was read.)

The Court: You may answer the question.

The Witness: Stella or myself, mimeograph work.

The Court: Did you sign that? Is that your writing?

The Witness: No.

The Court: Mimeograph work?

The Witness: Mostly mimeograph work.

The Court: Did you sign this letter?

The Witness: No.

The Court: Did Stella?

The Witness: It doesn't look like her handwriting.

Q. (By Mr. Rubin): Miss Evanisevich, was

(Testimony of Lynn Evanisevich.)

this document exhibited to your prior to your taking the stand this afternoon?

Mr. Margolis: We don't question the identification of that document, your Honor. It is in evidence already.

Mr. Rubin: If counsel will please bear with me, I would like to present this in my fashion.

The Court: The objection is overruled.

A. Yes.

Q. (By Mr. Rubin): And when did you examine this document?

The Court: You mean last before she got on the stand?

Mr. Rubin: Before she got on the stand, yes.

A. In your office.

Q. (By Mr. Rubin): About what time?

A. Just before lunch.

Q. I see. And did you place upon this document your [1346] handwritten initial?

A. Yes.

Q. And what did that initial signify?

Mr. Garrett: I object——

Mr. Andersen: We don't raise any question——

The Court: The objection is overruled.

Mr. Margolis: Objected to on the ground he is seeking to impeach his own witness.

Mr. Andersen: Particularly, may it please the court, the government says——

Mr. Rubin: I am not impeaching her at this stage of the game.

Mr. Andersen: The government says they want

(Testimony of Lynn Evanisech.)

to save time. We have the same letter in evidence. We introduced it ourselves. I can't understand it.

The Court: The objection is overruled. Let's get on.

Q. (By Mr. Rubin): All right. What did that initial signify?

Mr. Garrett: Objected to as assuming facts not in evidence.

Q. (By Mr. Rubin): What did your handwritten initial signify?

The Court: What facts? She just got through testifying she put it on there.

Mr. Garrett: He is assuming the initial signifies something, [1347] and there is nothing in the evidence to indicate that it signifies anything.

The Court: The objection is overruled.

Q. (By Mr. Rubin): What does that signify?

A. I put the initial on there——

The Court: Counsel, if you have any objections, either one of you, you may state them, rather than indicating your displeasure to the court's ruling by your conduct or your remarks to each other on the side.

Mr. Margolis: We were indicating no displeasure to the court's ruling. We just don't understand why the same exhibit has to be gotten in twice.

The Court: Counsel, if you have any objection, I again warn you that you must state them, and that you know how to state your objection.

Mr. Margolis: We have stated our objection.

The Court: You also know how to state that

(Testimony of Lynn Evanisevich.)

you don't understand something. I have made a ruling on it, and the matter will have to proceed orderly.

Mr. Andersen: The court was looking at me also?

The Court: I was looking at both of you.

Mr. Andersen: If I may express myself, it simply is, your Honor——

The Court: Do you have an objection to make, counsel?

Mr. Andersen: I object to this on the ground that it is [1348] cumulative. It is an exhibit already in evidence.

Mr. Rubin: If you want——

The Court: The objection is overruled. That exhibit is not in evidence. This is another piece of paper. It may be the original of that, or a copy of it. If counsel has some other purpose, it will appear or be developed. If it is cumulative, it is not material, and it will be subject to the same rule that all the rest of the testimony is admitted on, and it may be stricken in the event it is not connected.

Q. (By Mr. Rubin): Why did you place your initial upon that document, 236 for identification?

Mr. Garrett: Objected to as argumentative.

The Court: Did she ever answer the last question, what that signified?

Q. (By Mr. Rubin): What does this signify?

Mr. Andersen: I would like to object on the further ground that it is immaterial, and these

(Testimony of Lynn Evanisevich.)

questions are totally illogical, that no objections will be raised to the introduction of the letter in evidence, if he is laying the foundation, and we submit that a foundation is not necessary. I submit, may it please the court, that it is simply wasting time. He is simply laying a foundation which is unnecessary in view of the position that we take that there will be no objection to the letter. [1349]

The Court: The objection of counsel will be overruled, and the remarks of counsel that government counsel is wasting time will be disregarded by the jury.

Q. (By Mr. Rubin): What does this initial signify, this handwritten initial which you placed on there in my office this morning?

A. That this letter——

Mr. Garrett: That will be subject to my objection, your Honor?

The Court: You stated it. This is the third time. I have already ruled on it. I now rule on it again. It will be overruled.

Mr. Garrett: Yes, your Honor.

Mr. Rubin: Answer the question, please.

The Witness: What was the question, please?

The Court: Read the question.

(The question referred to was read by the reporter as follows:

(“Q. What does this initial signify, this handwritten initial which you placed on there in my office this morning?”)

(Testimony of Lynn Evanisevich.)

The Witness: That my initial is in the corner that I typed this letter.

The Court: I can't hear you.

The Witness: That I typed this letter and that my initial is in the corner. [1350]

Q. (By Mr. Rubin): Does it further signify that that letter was given to you to type by Mr. Zafran?

Mr. Margolis: Objected to on the ground that it has been asked and answered.

The Court: Objection sustained.

Mr. Rubin: I see from your Honor's ruling that she has testified——

The Court: She just got through testifying that that letter was given to her by Mr. Zafran.

Mr. Rubin: All right.

Q. Now with respect to Government's Exhibit 208 for identification entitled—I don't want to read the title of it—would you look at that exhibit. Does your initial appear in the lower right-hand corner of that exhibit? A. Yes.

Q. Was that placed there this morning also?

A. Yes.

Q. Now on that exhibit, what does your initial signify?

Mr. Margolis: Just a moment, your Honor. I object to that on the ground it is incompetent, irrelevant and immaterial, and that it is only necessary in the event that it is necessary to establish what the document is otherwise.

The Court: I think that is correct, counsel. If

(Testimony of Lynn Evanisevich.)

there [1351] is any doubt, as in connection with this exhibit as indicated by the witness in the last exhibit, and there is anything she did in connection with that letter that will refresh her recollection, then you may inquire about it, but otherwise there is no indication on her part that she doesn't know what it is or where it came from or anything else.

Q. (By Mr. Rubin): Looking at Government's Exhibit 208, I will ask you if that is a document that was given to you by Mr. Zafran for copying by you.

Mr. Andersen: What is the heading of that document?

The Court: It is No. 208 on the list.

Mr. Rubin: "Strike Committee Meeting."

The Witness: I couldn't positively say.

Q. (By Mr. Rubin): Is it your testimony that you do not know whether this is a document which was given to you by Mr. Zafran for copying?

The Court: You mean for her to copy that on something else or did she copy that? Did you write that?

Q. (By Mr. Rubin): Did you copy this from something that Mr. Zafran gave you to copy from?

A. I can't say positively that he handed it to me.

Q. Did someone in the office hand it to you to copy? [1352]

A. If I typed it; yes.

Q. Did you type it?

A. Yes.

Q. All right.

Mr. Andersen: Are you going to give these any numbers other than indicated on the list?

(Testimony of Lynn Evanisevich.)

The Court: No.

I don't know, maybe you were absent, but I indicated the other morning that the clerk would take this and it would be a part of the minutes and all exhibits as they came in would retain the same number as on the list.

Q. (By Mr. Rubin): Now I call your attention to Government's Exhibit 238 for identification and ask you whether this is a document that was typed by you.

Mr. Andersen: Pardon me. Did you say 228 or 238?

Mr. Rubin: 238.

Q. I ask you if you typed that document.

A. I typed the document.

Q. And from what did you type the document? From what did you copy the document, I should say.

A. I can't remember.

Q. Using this document to refresh your recollection, can you state from what you copied it?

A. No, I don't recall. [1353]

Q. You can't tell whether you copied this document or not, is that correct? You can't recall from what you copied it but you did type it, I understand?

A. Yes.

The Court: Where.

The Witness: Where?

The Court: Yes. Where did you type that?

The Witness: At the office.

The Court: What office? Union office?

The Witness: Local 33.

(Testimony of Lynn Evanisevich.)

The Court: And Local 36?

The Witness: Well, it is the same office.

The Court: It is the same office?

The Witness: Yes.

The Court: By the way, who is your immediate boss?

The Witness: Local 33.

The Court: Who gives you orders?

The Witness: The secretary-treasurer of Local 33.

The Court: Who is he?

The Witness: Pete King.

The Court: Pete King?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Rubin): Now did Mr. Zafran or anyone in Local 36 give you [1354] orders to copy that document? A. I don't recall.

Q. Would anybody else at that office give you such orders?

Mr. Margolis: Just a moment. I object to that as calling for a conclusion and opinion of the witness.

The Court: Overruled.

Mr. Garrett: May I ask, if your Honor please, that I be shown these documents at least once in a while?

The Court: Counsel, when the trial started the matter was brought up of my own idea and I suggested that the list be made and copies be furnished

(Testimony of Lynn Evanisevich.)

and be made available. Have these been made available to you?

Mr. Garrett: No, your Honor.

Mr. Rubin: If your Honor please, I think it is necessary to make this statement: After court last night I invited Mr. Garrett personally at the elevator to come upstairs to look at these documents on the list which we proposed to offer today. He chose to decline that invitation. I was there until 10:00 o'clock last night and I was very delighted at any time to exhibit them to him. And Mr. Garrett, I am sure, will confirm that statement. Mr. Andersen was also present.

Mr. Garrett: I don't know what the effect of counsel's statement is, nor do I think that I have to account for my [1355] unwillingness to spend the evening with him. I have a right, I believe, to see these documents before they are presented to the witness on the stand. I haven't the slightest idea whether they have any applicability to my case or not, and certainly if I am permitted to glance at them I will not hold matters up.

The Court: You have a right to see them but I had thought by this time—we are here now for the second week in the matter of introducing evidence and this is one of the first things brought up—that counsel would have taken advantage of the order which I made upon the government that they should make available to you at periods of your convenience these documents.

Mr. Garrett: I think that that should have been

(Testimony of Lynn Evanisevich.)

done, and last night at the hour of 7:00 o'clock, when I had clients with me to do business with, that was not a period of my convenience. I had a committee meeting to attend at 7:30.

Mr. Rubin: It was 5:00 o'clock, Mr. Garrett.

The Court: Let's show them to counsel. It looks like about a hundred documents here.

Mr. Rubin: Not with these two witnesses, your Honor.

The Court: I know, not with these two witnesses, but the list here is very long, and the purpose and object of it was to prevent just this thing in delaying the trial, because you [1356] are entitled to look at the documents. And if every document is going to be examined and perused with the care that you usually do such things, Mr. Garrett, and the thoroughness with which you do them, why, we will not be out of here by Christmas.

Mr. Garrett: I think I can just glance at these documents, your Honor.

Mr. Rubin: This is just foundation testimony anyway.

The Court: Show them to him. He is entitled to see them before any witness does.

Mr. Garrett: Let me take a glance at these that you have shown the witness. I don't think I will hold you up very much.

What number do they start with?

Mr. Rubin: There they are.

The Court: Do they have a red pencil number?

Mr. Rubin: Yes.

(Testimony of Lynn Evanisevich.)

The Court: The number which corresponds with the number on the list? You have a copy of the list, do you not, Mr. Garrett?

Mr. Garrett: Yes, the list is before me on the table, your Honor, the list itself. [1357]

The Court: While you are looking at those and that last exhibit, which was 238, you say Mr. King is your boss?

The Witness: Yes.

The Court: Did he dictate that to you?

The Witness: He didn't dictate any Local 36 to me.

The Court: Did he write something for you to copy?

The Witness: No.

The Court: Do you work for anybody else besides him and Mr. Zafran, I mean in the office?

The Witness: Yes.

The Court: You do?

The Witness: Yes.

The Court: Who?

The Witness: From time to time a number of people.

The Court: Who in the union, either one?

The Witness: Well, Jeff Kibre, anyone that is a present representative. From time to time it varies.

The Court: Who have you done work for?

The Witness: Well, George Blancovich, McKit-

(Testimony of Lynn Evanisevich.)

trick, Patovan—there have been a number of men. I don't recall them all.

The Court: Did any of them? Do you recall any more?

The Witness: Oh, yes, I recall more of them.

The Court: Tell us who they are. I am just asking you now. [1358]

The Witness: Orlando. That is about all I can think of now.

The Court: Did any of them dictate that to you, Exhibit 238?

The Witness: I don't recall. This has been quite some time ago.

Mr. Margolis: May the record show the document is dated September 24, 1945?

The Court: What is that?

Mr. Margolis: I think the record should show that the document is dated September 24, 1945.

Mr. Rubin: Then it should also show that it is Local 36 of the International Fishermen & Allied Workers of America.

Mr. Garrett: I have now inspected, your Honor, all of the documents which have been presented to the witness.

The Court: Very well.

Mr. Rubin: Let me give you some more. This will be the next batch.

Q. Is that Gilbert Zafran's signature, Miss Evanisevich?

A. It looks like the signature.

The Court: Don't you know his signature?

(Testimony of Lynn Evanisevich.)

The Witness: It looks like it.

The Court: Don't you know Mr. Zafran's signature?

Mr. Margolis: Your Honor please——

Mr. Rubin: She has testified that she did know Mr. [1359] Zafran's signature.

Mr. Margolis: May I complete my objection? I want to object to your Honor's question on the ground that the question has been asked and answered. She is not an expert.

The Court: She testified she did work for Mr. Zafran and, counsel, the question is material.

Mr. Margolis: The point is that the question has been asked and answered.

The Court: No, it has not, not my question.

Mr. Margolis: May I complete this objection? When anyone——

The Court: Would you mind standing when you address the Court?

Mr. Margolis: When anyone other than an expert is asked the question, that is actually the only honest answer a person can give. Only an expert can tell whether it is a person's signature, and even he can't be sure.

The Court: All he does is give his opinion.

Mr. Margolis: That is right. All she can say is that it looks like that, and I submit your question has been asked and answered.

Mr. Rubin: In response to the last question, the rule is that when a person is closely associated with one who constantly signs his name that individual

(Testimony of Lynn Evanisevich.)

need not be an expert to state whether in their opinion that is the signature. [1360]

The Court: That is correct, counsel. And I am asking this witness, who has testified she works there, whether or not she knows Mr. Zafran's signature. People who do those things operate as a matter of business on signatures of other people. I am not asking if that is it, I am asking you if you know.

Mr. Margolis: May I have that last question?

The Court: I am not asking if that is his signature, but if she knows Mr. Zafran's signature when she sees it.

The Witness: Why, yes, I know it when I see it.

The Court: All right. Is that it?

The Witness: It looks like what I would know to be his signature; yes.

The Court: I see.

Q. (By Mr. Rubin): I now show you Government's Exhibit No. 228 for identification and ask you if you typed that document.

A. Yes.

Q. Where did you type that document?

A. In our office.

Q. The office in which Local 36 is located?

A. Yes, that is correct.

Q. Were you given an original document from which to prepare that document at Local 36?

A. Usually—what did you ask me? [1361]

(Testimony of Lynn Evanisevich.)

The Court: The reporter will read the question.

(The question referred to was read by the reporter, as follows:

“Q. Were you given an original document from which to prepare that document at Local 36?”)

The Witness: We usually are given an original document.

Mr. Rubin: Your Honor please, at this time I move the Court for permission to cross examine this witness on the ground that I am taken by surprise, that she is a hostile witness. Her appearance is obviously evasive and I think we can save a great deal of time if I were to ask her questions in the form of cross-examination rather than on direct.

Mr. Margolis: I assign counsel's statement as misconduct your Honor, and request that your Honor instruct the jury to disregard the statement of counsel. There is no indication of that.

Mr. Garrett: I think it now becomes incumbent upon counsel to produce for the Court, if he makes the request in good faith, the documents or the testimony on the basis of which he claims to be taken by surprise, and if he fails to do so I too shall assign his conduct as misconduct.

The Court: The request will be denied at this time. I do not think there is sufficient foundation that has been laid to grant the request. The jury have the ability and the right and privilege to de-

(Testimony of Lynn Evanisevich.)

termine for themselves the attitude of any [1362] witness. There is not sufficient foundation laid.

Mr. Margolis: Can we have a ruling on our assignment and request to the jury?

The Court: The jury will disregard counsel's remarks. Proceed.

Q. (By Mr. Rubin): Miss Evanisevich, did anyone besides Mr. Gilbert Zafran to your knowledge give you the original document from which this was prepared?

Mr. Andersen: Objected to as assuming something not in evidence, may it please the Court.

The Court: Objection overruled.

Mr. Andersen: As I understand it, there is no evidence as to who gave anybody that document.

The Witness: I can't say for sure.

The Court: The objection is overruled, counsel.

Mr. Andersen: What was the answer?

The Court: The witness said something and I was talking and you were talking. Let us have the reporter read the answer.

(The record referred to was read by the reporter as set forth above.)

Mr. Rubin: Then I think she added something to that.

The Witness: I mean any of the men could have given it to me. [1363]

The Court: What is the title of the document?

The Witness: Minutes.

(Testimony of Lynn Evanisevich.)

Mr. Rubin: Strike membership——

The Court: Let her read it.

The Witness: Strike membership minutes.

The Court: Does it give the organization? Let me see it a moment.

(The document referred to was passed to the Court.)

The Court: It says "Strike Membership Minutes," it doesn't say "minutes," does it?

The Witness: Strike membership minutes.

The Court: Of what?

The Witness: Of Local 36, International Fishermen & Allied Workers of America.

The Court: All right.

Q. (By Mr. Rubin): You typed this at the office of Local 36, is that correct? A. Yes.

The Court: Let me see now, Miss Evanisevich, is Mr. Zafran the only one who maintains an office there in connection with Local 36?

The Witness: Yes.

The Court: Do you recall whether or not most of the work you did for Local 36 was given to you by him? [1364]

The Witness: Yes, most of it was.

The Court: Most of it was?

The Witness: Yes.

The Court: So that if you did anything for Local 36 it would be the exception rather than the rule?

(Testimony of Lynn Evanisevich.)

Mr. Garrett: I beg your pardon?

The Court: Is that right?

Mr. Garrett: May I have that question read?

(The question referred to was read by the reporter as set forth above.)

Mr. Andersen: During what time, may it please the Court?

The Witness: Different work.

The Court: During the period of time that she has been talking about. She testified that she worked for Local 33 and Local 36. During any period of time that she did that is what I am talking about.

The Witness: Most of it.

The Court: Do you remember the last question?

The Witness: No.

The Court: Read it.

(The record referred to was read by the reporter as set forth above.)

The Court: Strike the last question, and the jury will disregard it. [1365]

Q. (By Mr. Rubin): Did anyone besides Mr. Zafran connected with Local 36 give you any work to do there? A. Yes.

Q. Who?

A. Well, after meetings one of the committee or chairmen would hand me something.

Q. The names of the persons that would give

(Testimony of Lynn Evanisevich.)

you such direction, please? Was that true with respect to Document 228?

A. I don't know who gave that to me.

Q. Would it be anybody but Mr. Zafran or someone who was at the meeting?

A. It might have been; yes.

Q. Who else might it have been?

Mr. Margolis: Just a minute.

The Witness: I don't know who was at this meeting.

The Court: She said it might have been. Were you there at the meeting?

The Witness: No.

The Court: Did you copy it that night?

The Witness: No.

The Court: When was the meeting, do you know?

The Witness: "Chairman called the meeting to order at 1:15 p. m." [1366]

The Court: You don't know whether you were there at the meeting or not?

The Witness: I don't take minutes for their meetings.

Q. (By Mr. Rubin): Is it customary at Local 36 that after the meetings are held and—is it customary that the original minutes are in writing?

The Court: How do you mean, in writing?

Q. (By Mr. Rubin): In someone's handwriting? Are the original minutes taken in someone's handwriting? A. Yes.

(Testimony of Lynn Evanisevich.)

Q. And those minutes are then given to you to copy, I believe you testified, is that correct?

A. Yes.

Q. Now that is the usual and customary procedure, is that correct?

A. Yes.

Q. Now, then, looking at the Document No. 228, is that the product of the copying of some original minutes?

Mr. Garrett: Objected to as calling for a conclusion. The document speaks for itself.

The Court: Objection overruled.

The Witness: It looks like it. [1367]

Q. (By Mr. Rubin): Would you keep your voice up?

A. This doesn't look like it was given in handwriting.

Q. You mean it was dictated to you personally?

A. No. This sounds like I took these minutes.

Q. You took them yourself?

A. Can I read them?

Q. Surely.

A. (Examining document.) Yes, I think I took these.

The Court: You mean you were present at the meeting?

The Witness: Yes.

Q. (By Mr. Rubin): Then you transcribed them, did you? A. Yes.

(Testimony of Lynn Evanisevich.)

Q. You typed them? A. Yes.

Q. Then they were filed in the files of the union, were they? Is that the customary procedure?

A. Yes, given to the secretary, Gilbert.

Q. Given to him or filed?

A. Yes.

The Court: When you took in those meetings you wrote down what occurred?

The Witness: Yes. [1368]

Q. (By Mr. Rubin): Now showing you Exhibit No. 208 for identification, I will ask you if you typed that document.

The Court: I thought we went over that once.

Mr. Margolis: That is what our records show.

The Court: You had 237, 208 and 228.

Mr. Rubin: Very well.

Q. I show you Government's Exhibit 209 for identification and ask you if you typed that document.

A. Yes.

Q. Was that document dictated to you by Mr. Zafran?

A. Why, I don't know if it was dictated or given in longhand.

Q. It was either dictated or given in longhand, is that correct?

A. Yes.

(Testimony of Lynn Evanisevich.)

Q. Is that a carbon copy? A. Yes. [1369]

Q. I see. Customarily what is done with the carbon copies of documents that you prepared on your typewriter?

A. Given to Mr. Zafran or filed.

Q. Given to Mr. Zafran or filed?

A. Yes.

Q. And what happens to the original in the event that it is a letter, customarily?

A. It is given to him for signature.

Q. And after signature is it mailed?

A. Yes.

Mr. Dixon: Can you hear, Mr. Strain, back there?

Juror Strain: Yes.

Q. (By Mr. Rubin): I show you a document No. 210, for identification, and ask you if you typed that document. A. Yes.

Q. Was that either dictated to you or given to you to copy by Mr. Zafran? A. Yes.

Q. Was this document either filed or given to Mr. Zafran after it was prepared and the original mailed, is that correct?

A. Well, that is what is usually done.

Mr. Garrett: May I have the question and answer read, please?

(The last question and answer were read by the reporter) [1370]

(Testimony of Lynn Evanisevich.)

Mr. Garrett: I would like to call your Honor's attention to the fact that the last ten minutes of questions have almost invariably been leading.

The Court: Nobody has objected to them. I don't think they were objectionable, anyhow.

Q. (By Mr. Rubin): I show you Government's Exhibit No. 218, for identification, and ask you if you typed that document.

A. I couldn't be positive.

Q. I call your attention to the initials in handwriting "LE" on the lower right-hand corner of that document, and ask you when you placed those initials there?

Mr. Garrett: That is assuming a fact not in evidence, your Honor.

The Court: Yes, it is.

Q. (By Mr. Rubin): Did you place those initials there yourself, Miss Evanisevich?

A. Yes, they are my initials.

Q. When did you place them there?

A. This morning.

Q. Where? A. In your office.

Q. What do those handwritten initials signify?

A. That I typed this.

Q. And where did you type it? [1371]

A. I type everything in our office.

The Court: Miss Evanisevich, do your initials signify that you typed it, or do they signify when you placed them there this morning you stated to Mr. Rubin that you typed it at that time?

(Testimony of Lynn Evanisevich.)

The Witness: I stated that I had typed it. This looks like my mistakes in the typing.

The Court: And what is your testimony now—that you did type it?

The Witness: Yes.

Mr. Rubin: All right. [1372]

* * *

Mr. Andersen: May it please the court, with respect to the identification of certain documents that the witness Miss Evanisevich was examined about yesterday, and certain other documents about which Miss Evanisevich will testify——

The Court: Which are numbers on the list?

Mr. Andersen: No. 27, for identification.

The Court: 227?

Mr. Andersen: 27, your Honor.

Mr. Rubin: This is one of the sequence numbers.

The Court: 27, for identification?

Mr. Andersen: 28 for identification; No. 218, which has not as yet been offered.

The Court: All right.

Mr. Andersen: And No. 252.

The Court: That is, four documents?

Mr. Andersen: Four documents. The defendants, and Mr. Garrett joins in this stipulation, will stipulate that these documents need not be authenticated by the witness, and that a sufficient foundation has been laid for identification purposes. [1383]

The Court: Identification a what? Let me see them.

(Testimony of Lynn Evanisevich.)

Mr. Andersen: As authentic documents, your Honor.

The Court: Authentic documents, you mean as being what they purport to be?

Mr. Andersen: Yes, your Honor.

The Court: All right.

Mr. Andersen: In other words, that brings the government up to the point where they can introduce them, make an offer to introduce them in evidence, and that is all Miss Evanisevich was called for.

We stipulate further, according to the request of the government, that Nos. 27 and 28 were mailed.

The same stipulation, so far as the defendants we represent will apply to—according to the type-written schedule, your Honor No. 236, No. 208, No. 238, No. 228, 209, 210 and 218. Is that correct?

Mr. Rubin: Very well. Thank you. [1384]

* * *

The Court: Very well. Then on Exhibit 252 the stipulation will be as the others, that is to say, that it is what it purports to be, with the date appearing upon it, except that the writing in ink at the bottom of 252 is not covered by the stipulation. [1385]

Mr. Rubin: That is correct, your Honor.

The Court: Is that correct?

Mr. Andersen: Yes, your Honor.

The Court: All right.

Mr. Rubin: So that there are no further questions as to the basis of the stipulation, that when

(Testimony of Lynn Evanisevich.)

your Honor refers to these documents being what they purport to be, they purport to be documents taken from the books and files of the defendant Local 36 and kept in the ordinary course of business.

The Court: No, they do not purport to be on their face that. Exhibit 27 purports to be a letter signed by Gilbert Zafran.

Exhibit 28 purports to be a letter bearing a date and signed by Gilbert Zafran.

Exhibit 218 purports to be a copy of a resolution.

Exhibit 252 purports to be a copy of a letter.

Now if your stipulation is enlarged to the point that those are taken from those files, that is another thing, is it not?

Mr. Andersen: I think the stipulation that we have offered is about as far as we can go in good faith or be asked to stipulate to, may it please the Court.

The Court: Then the stipulation is as I have just stated it?

Mr. Andersen: Yes, your Honor. [1386]

* * *

Mr. Rubin: The stipulation is agreeable to the government, if your Honor please, as stated by the court.

The Court: Very well. And Miss Evanisevich may be excused, is that correct?

Mr. Rubin: That is correct.

The Court: Subject to the order of the court to return upon call.

Mr. Rubin: That is correct.

The Court: You understand that?

Miss Evanisevich: Yes.

The Court: Very well.

Next witness.

EMERY S. JONES

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record?

The Witness: Emery S. Jones.

The Clerk: Your address?

The Witness: 211 Virginia Place, Costa Mesa.

The Clerk: Take the stand. [1388]

Direct Examination

By Mr. O'Malley:

Q. You are sometimes known by the sobriquet of "Casey" Jones, are you not?

A. Yes, sir.

Q. What business are you in?

A. Commercial fisherman.

Q. What port do you fish out of?

A. Newport.

Q. Are you the owner of a boat?

A. No, sir.

(Testimony of Emery S. Jones.)

Q. What is the name of your boat?

A. Well, right now I have the Charlotte.

Q. What is your position on the boat?

A. Skipper.

Q. What is the name of that boat?

A. Charlotte.

Q. Directing your attention to May of 1946, were you a skipper on a boat at that time?

A. Yes, sir.

Q. What was the name of that boat?

A. Reliance.

Q. That was the Reliance? A. Yes.

Q. Who owned that boat? [1389]

A. Fresh Frozen Fruits. I think it was listed under E. H. Sherwood.

Q. You were the skipper of the boat at that time? A. Yes, sir.

Q. In your experience as a fisherman—by the way, how long have you been a fisherman?

A. All my life.

Q. In your experience as a fisherman, do the fishermen get paid a salary or a wage or do they receive compensation for the fish?

A. They share off, whatever the catch comes to, they share it.

* * *

They share off the catch. Whatever it is they share it up after expenses are paid.

Q. (By Mr. O'Malley): Directing your attention to May of 1946 again, what were you fishing for at that time, fresh fish?

(Testimony of Emery S. Jones.)

A. I was hauling in bait and fresh fish too.

Q. Where were you selling your fish at that time? A. Bayside Fish.

Q. Where is that located? [1390]

A. In Newport.

Q. Do you know who operates that establishment? A. George Naylor.

Q. During the month of June did you sell fish to Mr. Naylor?

A. I don't exactly remember.

Q. Directing your attention specifically to the period of the so-called strike, at that time did you sell fish to Mr. Naylor?

A. No, I didn't.

Q. You did not?

A. No, not during the strike I didn't.

* * *

Q. (By Mr. O'Malley): After the period of the strike, did you again sell your catch to Mr. Naylor?

A. Yes, sir.

The Court: Did you fish during the period of the strike?

The Witness: Well, I did a little fishing. I fished some barracuda but I never brought in any more anchovies or sardines where I had an order to sell them. I didn't have [1391] facilities to hold them.

* * *

(Testimony of Emery S. Jones.)

Q. (By Mr. O'Malley): Mr. Jones, are you a member of Local 36?

A. Well, right at the present time I am not.

Q. You are not? A. No.

* * *

Q. (By Mr. O'Malley): Have you ever been requested to join the organization which calls itself Local 36?

A. They have asked me to.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. [1392]

Q. (By Mr. O'Malley): You say they asked you to. Can you tell us specifically who you were referring to?

The Court: They are going to object now because there is no foundation so you had better fix the time, place and person present.

Q. (By Mr. O'Malley): Do you remember the approximate date at which you were requested to join Local 36?

A. Well, they have been after me, they have asked me several different times in the last two years to join.

Q. Can you fix a time specifically immediately prior to the strike or thereabouts?

A. I believe it was along about in March.

Q. March of 1946? A. Yes.

(Testimony of Emery S. Jones.)

Q. Where was the conversation held?

A. At Kings Landing.

Q. At Newport? A. Yes.

Q. Who did you talk to there?

A. Mr. McLauchlan.

Q. Can you tell us what Mr. McLauchlan said?

The Court: Is he here?

(The defendant McLauchlan stood.) [1393]

Q. (By Mr. O'Malley): Is that the gentleman to whom you talked? A. Yes, sir.

Q. Let the record show that the witness indicated the defendant McLauchlan.

Can you tell us what was said by Mr. McLauchlan and what was said by you, just using your own language?

Mr. Andersen: In addition to our running objection to this line of testimony, we should also like to object on the ground it is incompetent, irrelevant and immaterial; also too far removed in period of time.

The Court: Objection overruled.

Mr. O'Malley: Will you mark these?

The Clerk: 29, 30 and 31.

(The documents referred to were marked Government's Exhibits Nos. 29, 30 and 31 respectively for identification.)

Q. (By Mr. O'Malley): Can you tell us what was said by the defendant McLauchlan and what was said by you?

A. Well, he came down and asked me if I

(Testimony of Emery S. Jones.)

wouldn't join up with the union and have my boys join up too, and at that time we were pretty short on cash, so I told him he would have to wait a little while until we got to making some money before we could join up.

So he told me that would be all right, that he [1394] would be back and see me later then.

Q. Very well. Now directing your attention specifically to May 20, 1946, did you have a conversation with the defendant McLauchlan? First let me show you this document, which has been designated as Government's Exhibit 29 for identification. I ask you whether you have seen that document before. A. Yes, sir.

Q. Can you tell the Court and jury what that document is?

A. Well, I put down \$5 on my initiation fee, that was supposed to be on the initiation fee to join up with Local 36.

Q. To whom did you put it down?

A. To Mr. McLauchlan.

Q. To the defendant McLauchlan?

A. Yes.

Q. Did the document designated as Government's Exhibit 29 for identification refresh your recollection as to the date?

A. What?

Q. I wonder if you can tell us by examining that document precisely what the date was.

A. Well, it was, I believe it was about along the

(Testimony of Emery S. Jones.)

time the strike was pulled off, somewhere just before or somewhere after, along in there. I don't remember exactly the date. [1395]

Q. Very well. This is a receipt given to you by the defendant McLauchlan?

A. Yes.

Q. What did you say to Mr. McLauchlan and what did he say to you at the time that receipt was given to you?

A. Well, he told me he would appreciate it very much if I could give him more so he could get everything straightened up, so I would be squared away with the union.

Q. Very well. I show you this document which has been designated as Government's Exhibit 30, for identification, and ask you to state what that is, if you know.

A. Well, that is a clearance card that they issued during the strike so that we could go fishing.

Q. When you say "they" who do you mean?

The Court: What is that number?

Mr. O'Malley: Government's Exhibit 30, for identification, your Honor.

A. I believe this card was issued by Phelps, if I remember right.

Q. (By Mr. O'Malley): Can you point to defendant Phelps in the court room?

A. That's him over there (indicating).

(The defendant Phelps stood up.)

Q. (By Mr. O'Malley): Is that the gentleman by whom this card was given? [1396]

(Testimony of Emery S. Jones.)

A. Yes sir.

Q. I show you Government's Exhibit 31, for identification, and ask you to state what that document is, if you know.

A. Well, we was hauling bait and we had to work seven days a week, and we couldn't get off to stand our picket duty, so we had to pay for somebody else to stand it in our place, so that is the receipt that Bob Phelps gave me for \$32 I paid him for picket duty for my crew for that day.

Q. What is the date, if you know? Can you fix the time?

* * *

A. Well, right offhand I can't truthfully remember all the dates.

Q. (By Mr. O'Malley): Can you tell us when it was with relation to the period when the strike began?

A. It was about three weeks after the strike started, approximately. [1397]

* * *

Q. (By Mr. O'Malley): Where did this conversation with the defendant Phelps take place?

A. At the hall at Local 36.

Q. Who was present besides yourself and the defendant Phelps?

A. If I remember right, George Sear was there, that was one of my crew members, and myself, and then there was two or three fellows there from the union that was working on the strike and one thing and another.

(Testimony of Emery S. Jones.)

Q. What was said by you and what was said by the defendant Phelps?

A. Well, I told him that I couldn't let my crew off to stand picket duty, so he suggested that I pay and have somebody else stand it in our place, so that was satisfactory with us, so I paid him.

Q. Did he give you anything in return?

A. He gave me that receipt.

Q. Consisting of Government's Exhibit 31, for identification?

A. Yes, sir.

Q. Very well.

Mr. O'Malley: Government's Exhibits 29, 30 and 31 are offered in evidence.

Mr. Garrett: Objected to as incompetent, irrelevant and [1398] immaterial and not binding on this defendant.

The Court: Objection overruled.

Mr. Margolis: We have our general objection.

The Court: You have your general objection. Admitted in evidence.

(The documents referred to were received in evidence, and marked Government's Exhibits 29, 30 and 31.)

Mr. Andersen: What is 29?

The Court: 29 is a receipt for \$5 initiation. That is what it says.

Q. (By Mr. O'Malley): During the period of the strike did you do any picket duty?

(Testimony of Emery S. Jones.)

A. No, sir.

Q. You did not? A. No, sir.

Q. Very well. Are you now a member of defendant Local 36? A. No, sir.

Q. I take it you were not a member prior to the purported membership which you obtained as a result of paying the dues indicated in Government's Exhibit 29, is that right?

A. That's right. [1399]

* * *

Q. (By Mr. O'Malley): During the first period of the strike, the first day of the strike, were you fishing at that time? A. Yes, sir.

Q. What did you fish for? Did you get a catch that day? A. Yes, sir.

Q. What did you do with your catch?

A. I took it out and dumped it.

Q. Prior to your taking it out and dumping it, did you make any attempt to sell it?

A. Yes, sir.

Q. Will you tell us about that, please? Tell us what you did, where you went and whom you talked to, if anybody.

The Court: What date was this?

The Witness: The first day of the strike.

Well, we had an order for five to six ton of anchovy or sardines a day and we brought them in.

Q. (By Mr. O'Malley): From whom? Who was the order from? [1400]

A. George F. Nehler. They was to go through him.

(Testimony of Emery S. Jones.)

Q. Very well. Proceed.

A. But we never knew anything about the strike, and we brought the fish in, and they asked us not to sell them to George on account that they was on strike.

Q. When you say "they asked us," to whom are you referring?

A. Well, when we came in we saw there was a picket line in front, and a boat in the back picketing his market.

Q. Mr. Nehler's market? A. Yes .

Q. Very well.

A. We pulled down to the end of the bay and tied up, and then I got ahold of Mr. McLauchlan there.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What did he tell you?

A. He tried to make arrangements for us to unload our fish at another dock, but it didn't seem to pan out satisfactory, because we was using Nehler's trucks, and we couldn't make any arrangements to get any truck, so naturally the fish being fresh fish, why, they started spoiling on us, and so we had to take them out and dump them.

Q. In your fishing, Mr. Jones, do you fish inside or outside the three-mile limit? [1401]

A. Both.

The Court: Had you ever had to dump a load of fish before because you couldn't dispose of them?

The Witness: No, sir.

Mr. O'Malley: Cross-examination.

(Testimony of Emery S. Jones.)

Cross-Examination

By Mr. Margolis:

Q. You testified that you couldn't arrange to do picket duty because you were working seven days a week, is that right? A. That's right.

Q. You were fishing seven days a week?

A. Yes, sir.

Q. And that fishing of seven days a week was during the period of the strike?

A. I was fishing—there is two different ways to look at that: I was hauling bait for sport fishing boats, which is included as commercial fishing, but still at the same time I wasn't fishing for fish that we sold through the market, other than sardines or anchovies.

Q. That is your general business, isn't it—fishing? A. That's right.

Q. Your general business is fishing for bait?

A. That's right.

Q. So you were doing, Mr. Jones, during the period [1402) of the strike that which you did most of the time anyway? A. That's right.

Q. And were you working seven days a week at it? A. That's right.

Q. This particular catch that you took out and dumped was also a catch of bait fish, was it not?

A. That's right.

Q. And you offered to sell the fish to a dealer who ordinarily buys bait, is that right?

(Testimony of Emery S. Jones.)

The Witness: That's right. Any place to get rid of them.

The Court: You mean that particular fish that day? That is what he is talking about.

The Witness: If I remember right, Mr. McLauchlan asked me if I would sell the fish to somebody else if he could find somebody that would buy them, and I told him I would. But it just happened that we didn't find anybody.

Q. (By Mr. Margolis): And the reason no one else would buy them is because they wanted you to sell the bait to Mr. Nehler, isn't that right?

A. I don't know.

Q. You don't know about that? Isn't it a fact that these other delaers told you that as long as you would not [1403] deliver to Mr. Nehler they would not buy from you, isn't that a fact?

A. You mean the other fish dealers told me if I wouldn't deliver to him they wouldn't buy from me either?

Q. That's right. A. No.

Q. Did Mr. McLauchlan tell you that?

A. No, he didn't tell me that.

Q. He told you the other dealers would not take the bait, is that right? A. No.

Q. He tried to make arrangements for you to sell the bait?

A. Yes, I believe he did, if I remember.

Q. And didn't he tell you that the other dealers would not take the bait?

(Testimony of Emery S. Jones.)

A. They didn't want it; they didn't have any use for it.

Q. Did he tell you they didn't have any use for it?

A. No, he didn't tell me that. But they wouldn't buy it if they didn't have any use for it?

Q. The fact is they didn't buy it because you wouldn't sell it to Mr. Nehler, you know that?

A. No.

Q. You don't know that? [1404]

A. No, that ain't right. Because I sold fish to all the dealers in the harbor, and nobody refused to take my fish.

Q. That wasn't during the period that you were refusing to sell fish to any particular dealer during the strike?

A. I sold fish to Larry Fisher during the strike, barracuda.

Q. But you had not made arrangements to sell that barracuda to Nehler originally?

A. I fish for him all the time.

Q. Isn't this what happened with regard to the bait, that these other dealers said that because you had made arrangements to sell the fish to Mr. Nehler, and you were not going to deliver the fish to Mr. Nehler, that they would not buy it from you?

Mr. O'Malley: I think he already answered that question, your Honor.

A. No.

The Court: He answered it again.

Mr. Garrett, cross-examination?

(Testimony of Emery S. Jones.)

Cross-Examination

Q. (By Mr. Garrett): Was this load for bait—was it live bait?

A. No, sir; it was dead bait.

Q. Prior to the time you received that membership card in Local 36, I think you testified you had not belonged to Local 36 prior to that time?

A. Well, it was right a little bit before the strike or after the strike had started that I gave him the \$5 deposit for my initiation fee.

Q. And was that the first time you had ever belonged to this Local 36 organization?

A. No, I belonged to them in 1938 or '39, somewhere along in there.

Q. The same organization?

A. No, it wasn't the same as it is now.

Q. Same name?

A. There has been two or three different times there has been unions there. Once was the CIO. It wasn't the same as this. They started this up in the last few years, I believe.

Mr. Margolis: May I have the answer, please?

(The last answer was read.) [1406]

Q. (By Mr. Garrett): Up to 1946 you had belonged to just one other union organization, and that had been back in '38 or '39, is that right?

A. It was somewhere along in there; yes.

Q. Did you belong to any union organization in between? A. No, sir.

Q. Between '38 and '39 and 1946?

A. No, sir.

(Testimony of Emery S. Jones.)

Q. You don't know whether the one you belonged to in '38 or '39 was the same one as you joined in '46?

A. No, I don't remember, to be truthful about it. I don't remember whether it was the same union or not.

Q. Did you after June, '46, become a member of any other union organization?

A. No, sir.

Q. Did you become, after June, '46, a member of any other organization in Newport Beach that had to do with the price of fish?

A. No, sir.

Q. After 1946, or after May or June, 1946, did you become a member of any boat owners' association?

A. No, sir.

Q. I take it you are not now a member of any boat owners' association?

A. No, sir.

Mr. Garrett: No further questions, your Honor.

The Court: Redirect?

Mr. O'Malley: Just one question.

Redirect Examination

By Mr. O'Malley:

Q. You stated on cross-examination that you continued to fish during the period of the strike, is that right?

A. Yes, sir.

Q. How did you dispose of your catch during that time?

A. I sold it to boats outside of the harbor.

Q. Outside of the harbor?

A. Yes, sir.

The Court: That is, sport fishing boats or commercial?

The Witness: Sport fishing and a few commer-

(Testimony of Emery S. Jones.)

cial boats. At that time I don't believe there was any commercial boats out, but throughout the year we did.

Q. (By Mr. O'Malley): Was that your practice prior to the strike? A. Yes, sir.

Q. You did not sell any to Mr. Naylor during that period, is that correct? A. No, sir.

Mr. Andersen: That is objected to as asked and answered.

The Court: Let me see if I understand you correctly. Before the strike you fished for bait?

The Witness: Yes.

The Court: Which you sold to sports fishermen and to the fresh fishermen?

The Witness: To George Naylor; yes.

The Court: To both?

The Witness: Yes.

The Court: During the period of the strike you only sold to——

The Witness: To the boats.

The Court: ——to the boats?

The Witness: Yes.

Mr. Margolis: May I ask a question, your Honor.

Recross-Examination

By Mr. Margolis:

Q. Isn't it a fact that during the strike you sold fish to fish dealers at Newport Beach other than Mr. Naylor?

A. I just sold fish to one dealer in Newport and

(Testimony of Emery S. Jones.)

that was to Larry Fisher. I sold him some barracuda, that is all.

Mr. Margolis: That is all.

The Court: Every day?

The Witness: No, just one catch; one day.

Q. (By Mr. Margolis): You only offered him one catch for sale, is that right?

A. That is all I caught.

Mr. Margolis: That is all.

Redirect Examination

By Mr. O'Malley:

Q. Was that one catch going to a dealer who was picketed? A. No, sir.

The Court: What was the dealer's name that you sold the catch to?

The Witness: Larry Fisher.

Mr. O'Malley: No further questions.

The Court: You may be excused.

(Witness excused.)

The Court: Next witness.

Mr. O'Malley: Mr. H. R. Lee, please.

HERBERT RUSSELL LEE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Herbert Russell Lee.

(Testimony of Herbert Russell Lee.)

The Clerk: Your address? [1410]

The Witness: 2000 Newport Boulevard, Costa Mesa, California.

The Clerk: Take the stand.

Direct Examination

By Mr. O'Malley:

Q. What is your business, Mr. Lee?

A. Commercial fisherman.

Q. By whom are you employed, if anybody?

A. Right now I am not employed by anyone.

Q. Directing your attention to last May of 1946, were you employed as a commercial fisherman at that time? A. Yes, sir.

Q. By whom were you employed?

A. By E. S. Jones.

Q. He is the gentleman who sometimes is known as "Casey" Jones, is he not? A. Yes, sir.

Q. Where were you fishing at that time?

A. Newport Beach, sir.

* * *

Q. (By Mr. O'Malley): Did you catch any fish during May 1946? A. Yes, sir.

Q. Did you sell the catch? A. No, sir.

Q. Was the catch sold, to your knowledge?

A. No, sir.

* * *

Q. (By Mr. O'Malley): Prior to the period of the strike, taking your experience back for several weeks prior to the strike, you were fishing at that time, were you not? A. Yes, sir.

(Testimony of Herbert Russell Lee.)

Q. Did you have any catch during those few weeks prior to the strike? A. Yes, sir.

Q. Where did you sell that catch?

A. Bayside Fish Market in Newport.

Q. In Newport? A. Yes, sir. [1413]

Q. Do you know who operates that establishment? A. Yes, sir; George Naylor.

Q. Mr. George Naylor? A. Yes, sir.

Q. Now directing your attention to the period of the strike, the first day of the strike, did you make any sale to Mr. Naylor at that time?

A. No, sir.

Q. You did not? A. No, sir.

* * *

Q. (By Mr. O'Malley): Did you attempt to make any sale to Mr. Naylor? A. Yes, sir.

Q. Will you describe that attempt?

A. Well, we came in, we had about, I would say, roughly four ton of anchovies on the boat, and we were to sell them to George Naylor, and when we got to the dock we found out that there was a strike on and the place was picketed and the union forbade us to sell the fish to George Naylor.

* * *

Q. (By Mr. O'Malley): What was done with your catch, if anything?

A. We had to dump them, sir.

Q. Are you a member of Local 36?

A. No, sir.

Q. Have you ever been a member of Local 36?

A. No, sir.

(Testimony of Herbert Russell Lee.)

Q. During the period of the strike did you do any picket duty? A. Yes, sir.

Q. Will you tell us when you did it, as near as you can with relation to the period of the strike?

A. Shortly after we dumped our fish.

* * *

Q. You did picket duty during the strike?

A. Yes, sir.

Q. How many times? [1415] A. Once, sir.

Q. Did you make arrangements personally to do picket duty? Just state whether you did or not.

A. No, sir.

Mr. O'Malley: May this be marked for identification?

The Clerk: 32.

(The document referred to was marked Government's Exhibit No. 32 for identification.)

Mr. Andersen: No objection. You may offer it.

Mr. O'Malley: Thank you.

Q. I show you this document which is designated as Government's Exhibit 32 for identification and ask you whether you have ever seen that before.

A. Yes, sir.

Q. Will you tell us what that is?

A. That was a picket card they punched out the holes on the days you did picket duty, and that was also to let you know when you were to do picket duty again. It had the weeks marked off and the month.

Q. Whose card is it? A. That is my card.

(Testimony of Herbert Russell Lee.)

Q. That is your card? A. Yes, sir.

Q. Did you use that card in any way?

A. Yes, sir. [1416]

Q. What did you do with it?

A. They gave me that card. That was to identify yourself that you had done picket duty, and on what date by the punch mark on the margin.

Q. Who gave that card to you?

A. The union business agent.

Q. When was that done?

The Court: Who was it?

The Witness: A fellow by the name of McLauchlan.

The Court: Is he here?

Q. (By Mr. O'Malley): Can you point to him in the courtroom? A. Yes, sir.

The Court: Where is he?

The Witness: That fellow back there in the blue shirt.

Mr. O'Malley: Indicating the defendant McLauchlan.

Q. Was there any conversation at that time with Mr. McLauchlan?

A. Other than explanation of the card, sir; nothing other than the explanation of the card.

Q. Except that he told you what it was used for and how it was used, is that right?

A. Yes, sir.

Mr. O'Malley: Government's Exhibit 32 is offered in evidence. [1417]

(Testimony of Herbert Russell Lee.)

Mr. Garrett: I assume, your Honor, that this and all other exhibits are subject to my continuing objection and motion to strike?

The Court: Yes.

(The document referred to was received in evidence and marked Government's Exhibit No. 32.)

Q. (By Mr. O'Malley): You say you did picket duty once? A. Yes.

Q. Where was that done?

A. In front of John Horman's Fish Market in Newport.

Q. In Newport? A. Yes, sir.

Q. Tell us what you did when you were out there.

A. I was instructed to stand there and tell people not to go in because it was being picketed by the union, that they weren't to buy fish from that market.

Q. You were in Newport from time to time during the strike, were you not? A. Yes, sir.

Q. Do you know whether or not there were any markets in Newport that were not picketed, any fish markets? A. Yes, sir.

Q. There were? A. Yes, sir. [1418]

Q. How many were there?

A. There was only one that I knew of.

Q. What was the name of that market?

A. Fishermen's Coop.

The Court: Who owns that, do you know?

(Testimony of Herbert Russell Lee.)

The Witness: We didn't know much about it. I never sold fish there, but a fellow by the name of Larry Fisher was running it at the time.

The Court: Larry Fisher?

The Witness: Yes, sir.

Q. (By Mr. O'Malley): Did you have any other conversations with any members of this organization which calls itself Local 36?

A. Well, their business agent tried to get me to join the union several times.

Q. Who do you refer to as the business agent?

A. Mr. McLauchlan.

Q. Can you tell us when and where those conversations took place?

A. Well, before the strike took place he came down to our boat several times when we came in.

Q. At Newport? A. Yes, sir.

Q. How long prior to the strike was this?

A. I would say it was a week and a half or two weeks, [1419] sir.

Q. What did he say to you, if anything, and what did you say to him?

A. Well, he was telling us the advantages of the union and we argued back and forth the disadvantages and all that. It was more or less a joke to us.

Q. You did not join the union at that time?

A. No, sir. We signed a card but we never gave them any money.

Mr. O'Malley: Very well. Cross-examine.

(Testimony of Herbert Russell Lee.)

Cross-Examination

By Mr. Kenny:

Q. Mr. Lee, I wonder if you can help me on the difference between anchovies and sardines?

A. Well, sir, an anchovy is a little smaller fish and it is a different color.

Q. And the anchovy is used only for bait, is that right?

A. They do eat them.

* * *

Q. But these anchovies, do you catch them in sardine nets or do you have a special net?

A. You have a bait net and you can catch either anchovies or sardines.

Q. And anchovies when they get into a sardine net, what do the sardine fishermen do with them?

A. They usually have to steam their net because the webbing is too big for them to hold them and they will go through.

Q. So customarily tons and tons of anchovies are steamed out of nets and destroyed every year, isn't that right?

A. That is right.

Q. When did Mr. Naylor go into the business of buying —Mr. Naylor is a fresh fish dealer down there on the wharf, is he not?

A. That is right.

Q. When did he go in the business of buying anchovies?

A. I think he gets orders from time to time from different people. I wouldn't know exactly,

(Testimony of Herbert Russell Lee.)

because it is not my [1421] business, but he gets them for salt anchovies for bait and dry and stuff like that.

Q. This was going to be the first time, wasn't it, that you had ever taken any anchovies in to Mr. Naylor? A. No, sir.

Q. How long before that had you taken anchovies in to Mr. Naylor?

A. I worked from the 1st of May on this particular boat and we had taken in anchovies every time we had some extra.

Q. Did he sell those for food? Do you know what the purpose was?

A. They sold them for salt bait I think mostly.

Q. Salt bait? A. Yes, sir.

Q. Isn't it a matter of fact that Mr. Naylor had some contract for an experiment on salting anchovies, wasn't that it? A. I don't know.

Mr. O'Malley: That is objected to—very well.

The Court: What do you mean, salt bait?

The Witness: Well, they take these anchovies and salt them and cure them and use it for bait; for sports fishermen. They sell them at tackle stands all along the beach.

Q. (By Mr. Kenny): I want to get one other thing cleared up, and that [1422] is the only other question I have.

The Court: Are they good for bait?

The Witness: Yes, sir.

Q. (By Mr. Kenny): Now Larry Fisher, that is the Paladini Fish Market there?

(Testimony of Herbert Russell Lee.)

A. Yes, sir.

Q. And there is another market, the Fishermen's Cooperative Market, is that right?

A. I really don't know. I think they handle their fish through Larry Fisher or the Co-op, I am not sure.

Q. Paladini handles the fishermen's wharf, is that it?

A. I don't know what the connection is.

Q. That is your best impression?

A. It appeared so to me.

The Court: He said he doesn't know, counsel.

Mr. Kenny: That is all.

Mr. Garrett: I have a question.

Cross-Examination

By Mr. Garrett:

Q. On this day that you came in to Naylor's with a catch of sardines——

A. It wasn't sardines, it was anchovies.

Q. Thank you. You have corrected me.

On that day you were talking about, who did you talk to? [1423]

A. I talked to my captain.

Q. And he was the one that did the talking to Naylor, was he?

A. Yes, sir.

Q. And he was the one that did the talking to whoever was around Naylor's place picketing or otherwise?

A. Well, no, we came in, and when I found out it was picketed we got ahold of McLauchlan.

Q. Who did you find out from that it was picketed.

A. There was men around.

(Testimony of Herbert Russell Lee.)

Q. Did you see it or did someone tell you?

A. We came in and saw it.

Q. Then did you go ashore?

A. Yes, sir.

Q. And did you talk to anybody at Naylor's Market?

A. I didn't talk to no one in Naylor's Market; no.

Q. Did you hear anybody talk to anyone at Naylor's Market at that time?

A. No, sir. We got ahold of McLauchlan and we tried to get them——

Q. Was that at Naylor's Market?

The Court: Wait a moment. He hasn't finished his answer.

A. We tried to get them to let us sell those fish with the promise that we wouldn't bring any more in until the [1424] strike was over.

Mr. Garrett: I move to strike that as not responsive to the question.

The Court: Motion denied.

Q. (By Mr. Garrett): What I am trying to get at is who you talked to or who you heard Mr. Jones talk to at Naylor's Market, or did you have to telephone or get Mr. McLauchlan somewhere else?

A. I think we telephoned Mr. McLauchlan and he came down.

Q. So when you first came there to Naylor's Market you didn't have a conversation with any-

(Testimony of Herbert Russell Lee.)

body about whether you could deliver or not; is that right?

A. The fellows was in the rowboat in back of the market there in the bay, and they said that we couldn't come in there and deliver fish because it was on strike. [1425]

Q. And who was with you at that time?

A. We was on the boat at the time.

Q. You were on the boat? A. Yes.

Q. Do you remember what that conversation was, what you said or what Mr. Jones said, and what the man in the rowboat said?

A. I don't remember what we said, but when we found out we couldn't go there, we went to the city dock and tied up.

Q. You don't remember what was said?

A. No, sir, there was nothing—

Q. Just give me the substance of what was said either by the men in your boat or the men in the rowboat.

A. We just said—well, we figured out between ourselves that we would find out about it before we tied up and sold our fish, and so we went to the city dock.

Q. You must remember the substance of what was said; was there some conversation between the men on your boat and the men in the rowboat which you heard?

A. No. We came in, they hailed us and told us we couldn't come in there because the place was picketed, and that was all.

(Testimony of Herbert Russell Lee.)

Q. Anything else said at that time by anyone in your boat or in the rowboat that you remember?

A. There was no use to talk. We just went to the city [1426] dock.

Q. I am not asking you that; I am asking you what was said, if anything.

A. I don't remember anything else that was said.

Q. You don't remember anything else being said.

A. There was things probably said, but I don't remember it just offhand.

Q. I see. Then what did you and Mr. Jones do, where did you go from there?

A. We went to the city dock and tied up and got ahold of Mr. McLauchlan.

Q. Was that by telephone?

A. Yes, I believe we called him.

Q. Then did you go back to Neylor's market, or did you stay on the city dock?

A. We stayed at the city dock.

The Court: Has Neylor's market got a parking place in front on the water side?

The Witness: Yes.

Q. (By Mr. Garrett): That is on the bay side?

A. Yes, sir.

Q. When did you sign your application for membership in the union?

A. I signed one about a week and a half before the strike. [1427]

Q. A week before or a week after?

A. A week before. And he said I would be a

(Testimony of Herbert Russell Lee.)

member as soon as I paid up, but I never paid up. I just signed it to get rid of him.

Q. Did anyone else from your boat sign an application for membership in the union?

A. I think there were some, but I don't remember who.

Q. How many were in the crew?

A. Six.

Q. Then this conversation you had with Mr. McLauchlan was not at Neylor's, but was on the city dock, is that right?

A. I had no conversation with Mr. McLauchlan.

Q. That is what I am trying to get at. Were you present at any conversation with Mr. McLauchlan and yourself?

A. Yes, I was present when the captain talked to Mr. McLauchlan.

Q. Where was that?

A. I believe it was on the city dock, sir.

Q. And do you remember anything about what was said by either one of them?

A. The captain asked him to find out if we could sell our fish that day with the understanding that we wouldn't bring any more until the strike was over, and he was refused.

Mr. Garrett: No further questions.

The Court: Redirect? [1428]

Mr. O'Malley: Just a couple of questions, is all.

(Testimony of Herbert Russell Lee.)

Redirect Examination

By Mr. O'Malley:

Q. You stated that you didn't know the details of Mr. Neylor's business, is that correct?

A. That is correct.

Q. You are not employed by him, are you?

A. No, sir.

* * *

Q. (By Mr. O'Malley): You had no reason to have any acquaintanceship with the details of Mr. Neylor's business, did you? [1429]

A. No, sir.

Q. You are not employed by him, are you?

A. No.

Q. You are not under his control or direction in any way, are you? A. No.

Mr. Garrett: That calls for a conclusion, if your Honor please.

Q. (By Mr. O'Malley): Are you under his control or direction?

Mr. Andersen: He doesn't even fish any more, your Honor.

A. No, sir.

Q. (By Mr. O'Malley): Very well. Have you ever been under the control or direction of Mr. Neylor? A. No, sir.

Q. Very well. With respect to this catch which you say was dumped, did you have any interest in that catch? A. Yes, sir.

Q. What was that interest?

A. I had my share coming out of it.

(Testimony of Herbert Russell Lee.)

Q. Very well.

The Court: How did you fish there?

The Witness: We fished on shares, sir.

The Court: What were the shares?

The Witness: There was six men. [1430]

The Court: Boat share——

The Witness: Yes, and a share for each man on the boat, and a half share for the net.

The Court: Did the captain get an extra share?

The Witness: Yes, the captain got an extra half share.

The Court: Extra half share?

The Witness: Yes.

The Court: So there were six, seven, eight shares?

The Witness: Yes, sir.

The Court: Is that the way you always fish?

The Witness: All depends; some boats do and some don't.

The Court: On this boat, I mean.

The Witness: Yes.

The Court: You always had a crew of six?

The Witness: No.

The Court: When you had a lesser crew you had a lesser number of shares?

The Witness: Yes, sir.

Mr. O'Malley: That is all.

The Court: The witness may be excused. Next witness. [1431]

* * *

MORRIS SOUDER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Morris Souder.

The Clerk: Your address?

The Witness: 403 29th Street, Newport Beach.

Direct Examination

By Mr. O'Malley:

Q. Where do you live, Mr. Souder?

A. Newport Beach.

Q. What is your business? A. Fisherman.

Q. How long have you been in that business?

A. Thirteen years.

* * *

Q. (By Mr. O'Malley): Directing your attention to the month of May, 1946, were you engaged in the business of fishing out at Newport Beach at that time? A. Yes.

Q. What were you fishing for at that time?

A. Barracuda.

Q. For any other type of fish?

A. Well, we was catching a few mackerel, but we was specializing in barracuda.

* * *

Q. (By Mr. O'Malley): You were catching fish at that time, I take it? A. Yes.

Q. Did you sell your catch prior to the strike?

A. Yes.

Q. Where did you sell your catch?

(Testimony of Morris Souder.)

A. I sold them to Larry Fisher, in Newport.

Q. Prior to the strike? A. Yes.

The Court: How does he run his business, under what name—Larry Fisher?

The Witness: It was Paladini.

The Court: Paladini Fish Company? [1433]

The Witness: Yes.

Q. (By Mr. O'Malley): Did you sell your catch any place else?

A. No. I iced a lot of fish.

Q. You iced a lot of fish. Was there any place else——

The Court: Wait a minute. Is it your custom to ice fish?

The Witness: I iced them and saved them on the boat.

The Court: You are talking about before the strike now, are you not, counsel?

Mr. O'Malley: Yes, prior to the period of the strike.

The Witness: Yes.

Q. (By Mr. O'Malley): Where did you sell your catch at that time?

A. George Neylor's.

The Court: Did you ice fish then?

The Witness: Yes.

Q. (By Mr. O'Malley): Where was that sale made? Where is Mr. Neylor's place of business?

A. Bayside Fish Market, Newport Beach.

Q. Directing your attention to the period of the

(Testimony of Morris Souder.)

so-called strike at Newport, did you continue to sell your fish to Mr. Neylor? A. No.

Q. You did not. After the period of the strike did [1434] you sell your fish to Mr. Neylor?

A. Yes.

Q. Are you a boat owner or are you one of the crew? A. I am a boat owner.

Q. What is the name of your boat?

A. Louise.

Q. Do you have the entire ownership of that boat?

A. Yes, my name is on the papers.

Mr. Andersen: What is that, please?

The Court: Yes, my name is on the papers.

Q. (By Mr. O'Malley): Can you tell us approximately how much investment you have on that boat in round figure? A. Around \$4,000.

The Court: Mr. Souder, I don't think I quite understood your custom before the strike. You said you ice fish then?

The Witness: Yes, when we stayed out three or four days.

The Court: When you stayed out three or four days?

The Witness: Yes.

The Court: Not when you came in?

The Witness: No.

The Court: When you came in you sold it all?

The Witness: Yes.

The Court: And during the strike you said something about icing your fish?

(Testimony of Morris Souder.)

The Witness: Yes.

The Court: Did you change your custom during the strike?

The Witness: Yes, I did. [1435]

The Court: What did you do that was different during the strike than before the strike?

The Witness: I iced my fish and kept them, and I was coming in every evening.

The Court: You mean you iced them in your boat?

The Witness: Yes.

The Court: You kept them for the whole period of the strike?

The Witness: No, I had to get rid of them. I sold them.

The Court: You sold them?

The Witness: Yes.

The Court: I see; to fish dealers?

The Witness: Yes.

The Court: In Newport?

The Witness: Yes.

Q. (By Mr. O'Malley): To what fish dealers did you sell the fish during the strike?

A. To Larry Fisher.

Q. Larry Fisher? A. Yes.

Q. Do you know what the name of his establishment is?

A. Paladini. It was at that time, I believe.

Q. Are you a member of Local 36, this organization which calls itself Local 36? [1436]

A. No.

(Testimony of Morris Souder.)

Q. Have you ever been a member of Local 36?

A. Yes.

Q. What was the period of your membership?

A. When they first started the union down there.

Q. Can you tell us approximately when that would be?

A. Around 1936, '37.

Q. Did you have membership at the time of the so-called strike?

A. No, sir.

Q. Did you do any picket duty during the strike?

A. Yes.

Q. Did you make arrangements with anybody to do picket duty?

A. Yes.

Q. To whom did you talk?

A. Charlie McLauchlan and——

Q. Where was the conversation held?

The Court: He hasn't finished.

A. In the Union Hall.

Q. (By Mr. O'Malley): In the Union Hall?

A. Yes.

Q. Did you talk to somebody else beside Mr. McLauchlan?

A. I don't exactly remember. There was three or four other fellows there. [1437]

Q. When was this conversation with reference to the period of the strike?

A. It was on the last week of the strike, I believe.

Q. Do you see Mr. McLauchlan anywhere in the court room?

A. Yes, sir.

Q. Can you point to him, please?

(Testimony of Morris Souder.)

A. Over there with the blue shirt on.

Mr. O'Malley: Let the record show that the witness is indicating the defendant McLauchlan.

Q. (By Mr. O'Malley): You say you did picket duty during the strike. How many times?

A. Once.

Q. Where did you do picket duty?

A. At John Harmon's fish market in Newport Beach.

* * *

Q. (By Mr. O'Malley): Did you have any conversation with anybody else whom you see in the court room? A. No, sir.

Q. Are you employed by any fish dealer?

A. No, sir.

Q. Are you under their control or direction in any way?

A. I was at the time of the strike. I owed George——

Q. I beg your pardon? [1438]

A. At the time of the strike I did owe a little money.

The Court: To whom?

The Witness: To George Neylor Bayside Fish Market.

The Court: How much?

The Witness: It was around \$100, somewhere around there.

Q. (By Mr. O'Malley): Did you have any arrangement by which he paid you any wages or salaries?

(Testimony of Morris Souder.)

A. No, sir; only on a share basis. I could borrow on my catch.

The Court: In advance?

The Witness: Yes.

Q. (By Mr. O'Malley): Very well. When you fished did you fish inside or outside of the three-mile limit? A. Both.

The Court: When you sold your catch to George Neylor, did he get a share of your catch?

The Witness: No.

The Court: He did not?

The Witness: No, sir.

The Court: Were you obliged, or did you have some agreement with him that you had to sell your catch to him?

The Witness: No, sir.

The Court: So you could sell it to any other dealer?

The Witness: Yes, sir.

The Court: Did you ever? [1439]

The Witness: Yes.

The Court: At a better price than he offered, the same, or lesser?

The Witness: It was the same.

Q. (By Mr. O'Malley): I show you this document which has been designated as Government's Exhibit 33, for identification, and ask you to state if you know what it is. A. Yes.

Q. What is that document?

A. It is my clearance card from——

Mr. Andersen: We will stipulate it is a clear-

(Testimony of Morris Souder.)

ance card issued by the union. I have no objection to it going in.

Mr. O'Malley: If there is no objection, I will ask him what he understands it is.

Q. (By Mr. O'Malley): What was your answer, please?

A. It is a clearance card for picket duty that they give you at the office when you finished your picket duty. [1440]

Q. Did you obtain that from anybody?

A. Yes.

Q. From whom?

A. From Charlie McLauchlan.

Q. When did you obtain that?

A. The day that I stood picket duty the last week of the strike.

Q. Was anything said to you at the time you obtained that?

A. Yes.

* * *

Q. (By Mr. O'Malley): Where were you when you obtained this?

A. At the Union hall.

Q. Do you know approximately when it was with reference to the period of the strike?

A. No, I don't.

Q. Was it early in the strike or late in the strike?

A. It was late in the strike.

Q. Who was present besides yourself? [1441]

A. Two fellows. One fellow that went with me

(Testimony of Morris Souder.)

and stood picket duty with me on the picket line.

* * *

Q. What was the name of that fellow who did picket duty with you?

A. Joe Dorsey.

Q. Who was there besides yourself and Mr. Dorsey?

A. And Johnnie Simpson.

Q. Did you talk to anybody when that was given to you?

A. I talked to—you mean in the union hall?

Q. When that document designated as Government's Exhibit 33 for identification was given to you, who gave it to you?

A. Charlie McLauchlan.

Q. You have testified that these other individuals were present at that conversation, is that right?

A. Yes.

Q. What was said by Mr. McLauchlan when he gave it to you?

A. He says, now you have that document there that I was eligible to pay up the days that I had missed in the picket duty on the time before all through the strike.

Q. Was it subsequent to the obtaining of this card that [1442] you did your picket duty?

A. Yes.

Q. Where did you do picket duty?

A. In front of John Horman's Fish Market in Newport Beach.

* * *

(Testimony of Morris Souder.)

Mr. O'Malley: Very well. Government's Exhibit 33 is offered in evidence.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 33.)

Q. (By Mr. O'Malley): Do you know whether there were picket lines around all the fish markets in Newport during the period of the strike?

A. No.

Q. There were not? A. Yes.

The Court: Were there picket lines around the fish markets during the month of June?

The Witness: Every fish market?

The Court: Any one. [1443]

The Witness: Yes, there was.

The Court: Where was the picket line?

The Witness: It was in front of George Naylor's Fish Market in Newport.

The Court: For the whole month?

The Witness: Well, I wouldn't say for sure whether it was a whole month.

Q. (By Mr. O'Malley): Were there any dealers in Newport during the month of June who did not have picket lines around their place of business?

A. Yes.

Q. What dealers were those?

A. It was the Fishermen's Co-op and Frank Satori and Larry Fisher.

(Testimony of Morris Souder.)

The Court: What is the Fishermen's Co-op? who owns that?

The Witness: Most all the fishermen have gotten together and made up a kind of an association.

The Court: Are you a member of it?

The Witness: No, sir.

The Court: Is that the fishermen themselves?

The Witness: Yes.

The Court: Who runs that?

The Witness: I couldn't say who runs it. I never have [1444] been over there.

Q. (By Mr. O'Malley): Did you sell fish during the period of the strike to the fish dealers who were not picketed? A. Yes.

Mr. O'Malley: Cross examine.

* * *

MORRIS SOUDER

called as a witness by and on behalf of the government, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination

By Mr. Kenny:

Q. Mr. Souder, regarding Mr. Naylor, didn't he help you buy an engine for your boat, the Louise?

Mr. O'Malley: Objected to as not within the scope of the direct examination.

The Court: What is that?

Mr. O'Malley: Objected to as not within the scope of the direct examination.

The Court: Overruled.

(Testimony of Morris Souder.)

Q. (By Mr. Kenny): Didn't he loan you money for the purchase of an engine for your boat Louise?

A. Yes, he did.

Q. How much was that?

A. \$300 or \$400.

Q. You said you borrowed on the catch in advance, is that right? A. Yes.

Q. If you went out and there was no catch, did you have to pay Mr. Naylor back?

A. No, sir.

Q. He lost on that too?

A. Well, the way it was fixed, whenever I did bring in a catch, it was taken out a little at a time.

Q. So he didn't lose his money if you failed to bring in a catch on that particular voyage, isn't that right? A. No, sir.

Q. But he would get it out of the next voyage?

A. Yes.

Q. And if he didn't get it out of that one he would get it out of the next one?

A. Yes.

Q. You took your fish, when you caught it, around to his wharf first, didn't you?

A. Yes.

Q. And any fish that he didn't buy, then you attempted to sell to other dealers, wasn't that your system? A. Yes.

Q. And you sold all that you could sell to Mr. Naylor, that is, all of the fish that you brought in, you sold him all that he would take, isn't that right, before you went to the other dealers?

(Testimony of Morris Souder.)

A. Up until the strike came, yes.

Q. I am asking about the general period before the strike. And you sold it to him regardless of what price he offered you, didn't you?

A. Yes.

Q. The live bait season came just around the time of the strike, didn't it? A. Yes.

Q. And you wanted a net for that purpose?

A. Yes.

Q. By the way, did you own your own net or did you borrow a barracuda net from Mr. Naylor?

A. I was using his nets at the time.

Q. Your father is a member of the crew of your boat, isn't he? A. Yes.

Q. And he owns a live bait net?

A. Yes. [1448]

Q. The live bait net, that is a fine mesh net, isn't it? A. Yes.

Q. More expensive than the ordinary type of net? A. Yes.

The Court: What is the mesh on a live bait net?

The Witness: Half an inch on the back part where they hold the small bait.

The Court: You mean it varies?

The Witness: Yes.

Q. (By Mr. Kenny): Your father is an active member of the union, Local 36, isn't he?

A. Yes.

Q. Didn't your father tell you that before he would loan you his live bait net that you would have to go down and straighten out your relationship with the union?

(Testimony of Morris Souder.)

Mr. O'Malley: Objected to as incompetent, not within the scope of the direct examination.

The Court: Overruled.

The Witness: Yes, he did.

* * *

Redirect Examination

By Mr. O'Malley:

Q. When you came into Mr. Naylor's place of business to sell your fish you did sell following the time when Mr. Naylor made you a loan; you didn't do so under any orders from Mr. Naylor, did you?

A. No, sir.

* * *

Q. During the period of time when you loaned Mr. Naylor some money, did you take any orders from him?

The Court: He loaned Naylor money?

Q. (By Mr. O'Malley): When you owed Mr. Naylor some money, did you take any orders from Mr. Naylor as to the time and place when you should fish?

A. No, sir.

Mr. O'Malley: That is all.

The Court: What is the most amount of money you ever owed Mr. Naylor?

The Witness: It was around—well, not at one time, I have owed him as high as \$150, but I always keep it down as low as I can. But at that time when I borrowed that money for the net, why I had some money in the bank and I couldn't get to it.

The Court: You had some what?

(Testimony of Morris Souder.)

The Witness: Some money in the bank but I couldn't get at it. The next day I went and brought it out and paid him [1451] for it.

The Court: You borrowed \$300 and then paid him back?

The Witness: Yes.

The Court: The next day?

The Witness: Yes, sir.

The Court: Well, now, is this a continuing practice with Mr. Naylor or was that an occasional thing that you owed him that money?

The Witness: We had to have it right way.

The Court: I mean, you owed him money all the time you have been fishing?

The Witness: No, sir.

The Court: How long have you owed him money at one time before you paid it back?

The Witness: It varies. I go and borrow money off of him and then I pay him out of the fish, and by the time I get another catch I would have to go and borrow more, and in that way I just kept owing him and me paying him back.

Q. (By Mr. O'Malley): His Honor's question I think was directed to determining how long that situation has prevailed.

Mr. Andersen: I think he answered. He said all the time, as I understood his answer, your Honor.

The Court: Was that right? Is that what you meant?

The Witness: No, sir. Mostly in the wintertime when [1452] times are rough, why, most generally

(Testimony of Morris Souder.)

a fisherman has to have somebody he has to fall back on to borrow money from when it gets kind of rough.

The Court: And you get yourself out of hock in the spring, is that right?

The Witness: Yes, sir.

The Court: And then in the summertime you do not owe anybody any money.

The Witness: That is right.

The Court: Is that the custom with you?

The Witness: Most generally it is.

The Court: I see.

Mr. Kenny: Could I ask him one question?

The Court: You say "when it gets rough," you mean when there isn't any fish? You mean in wintertime there isn't much fishing?

The Witness: That is right.

* * *

The Court: I asked you about borrowing money from some dealer down there and you said in the wintertime you had to have somebody to fall back on because the going was rough, but in the summertime you got out of debt early in the spring, and I think what Judge Kenny wanted to know was whether or not that was the custom usually among the fishermen, the rest of the fishermen.

The Witness: Yes, the majority of them is that way.

The Court: Do they all borrow from Mr. Naylor?

The Witness: No, sir. [1454]

(Testimony of Morris Souder.)

The Court: Do they usually borrow from the dealers?

The Witness: Well, they have other sources where they could go to borrow, from the finance companies, other places.

The Court: Finance companies and other places?

The Witness: Yes.

The Court: All right.

Q. (By Mr. O'Malley): After borrowing money from Mr. Naylor and selling your fish to him, did he pay you any different price than any other dealer was offering?

Mr. Kenny: Just a minute, your Honor. He hasn't testified he sold to any other dealers.

The Court: Yes, he testified he sold to other dealers.

Mr. Kenny: What Naylor didn't take.

The Court: He testified that he sold other dealers. Do you remember that question, Mr. Souder?

The Witness: Yes, I do.

Q. (By Mr. O'Malley): Did Mr. Naylor pay you any different price than any other dealer was offering you?

A. Yes, he has occasionally. The biggest portion of the time he pays the same as any other dealer.

The Court: When he pays a different price, does he pay more or less?

The Witness: More, usually.

Mr. O'Malley: No further questions.

The Court: All right. The witness is excused.

Mr. Garrett: I have a question or two. [1456]

(Testimony of Morris Souder.)

Recross Examination

By Mr. Garrett:

Q. Is Newport Beach your home port?

A. Yes.

Q. Your boat is registered from there, is it?

A. Yes.

Q. Is your boat documented? A. No.

The Court: What do you mean by that? What difference does that make?

The Witness: It is registered.

The Court: What is that?

The Witness: It is a registered boat.

The Court: He said, "Is it documented?" What does that mean?

The Witness: That means a lot.

The Court: It means what?

The Witness: It means a whole lot.

Mr. Andersen: The size of the boat, your Honor.

Mr. Garrett: Six ton they document.

The Court: What does it mean if you are documented, and if you are registered but not documented?

The Witness: A documented boat, a man has got to be signed on to it to run it; and a registered boat he doesn't.

The Court: In other words, a documented boat you have [1457] to have a crew, is that it?

The Witness: Yes. Or you can have a crew on either one.

(Testimony of Morris Souder.)

The Court: Well, if you register your boat and don't document it, what does that mean?

The Witness: Well, it is under tonnage.

The Court: In other words, your boat is too small to be documented?

The Witness: No, it isn't.

The Court: Will you explain what is the difference?

The Witness: I don't know.

The Court: All right.

Q. (By Mr. Garrett): How long is your boat?

A. 38 feet.

Q. There in Newport Beach you sell most of your fish, don't you? A. Yes.

Q. That has been true for some years past, hasn't it? A. Yes.

Q. During the past few years have you sold fish anywhere else than Newport Beach?

A. I have sold fish in Santa Barbara. That is when I was fishing up there.

Q. I take it by far the most of your fish that you have caught in past years you have sold in Newport Beach, is that right? [1458]

A. Yes.

Q. How many dealers are there that buy fish?

A. There is five at present.

The Court: That is, fresh fish?

The Witness: Yes.

Q. (By Mr. Garrett): There isn't any cannery at Newport, is there? A. Three.

(Testimony of Morris Souder.)

Q. Do the canneries sometimes finance boat owners? A. Yes, they do.

Q. The fresh fish dealers—does this co-operative buy, too, the one you called the co-operative, does it buy fresh fish?

A. I don't know what you mean.

Q. Well, you spoke of one of the dealers, I think—maybe it was some other witness—there is one fish buyer there that calls itself a co-operative, do you know that? A. Yes.

Q. What is the full name of that one?

A. I couldn't say.

Q. Whatever it is, you don't belong to it, is that it? A. Yes.

Q. You do not belong to it?

A. That's right.

Q. You don't sell your fish there? [1459]

A. No, sir.

Q. Do you usually find out what the prices are when you come in with a catch?

A. You can look at the report from the day before. As the fish come in they make out a report and send it to each market.

Q. Is that fish and game?

A. I couldn't say.

The Court: What do they do,—post it on a board?

The Witness: Yes, they either post it on a board or they put it up on the window in the market.

(Testimony of Morris Souder.)

The Court: That is from the day before?

The Witness: Yes.

Q. (By Mr. Garrett): Is that poundage and tonnage or is it dollars?

A. Poundage and tonnage.

Q. No price? Is there any price on that report that they post?

A. I don't believe—I don't know. I never pay much attention to the price.

Q. Do the other fish buyers there usually pay the same price as Mr. Naylor? A. Yes.

Mr. Garrett: That is all.

The Court: The witness may be excused. [1460]

You may be excused, Mr. Souder. Next witness.

The Witness: Thank you.

ARCHIE UNDERWOOD

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Archie Underwood.

The Court: Your address?

The Witness: 1312 West Temple, L. A.

Direct Examination

By Mr. Schwartz:

Q. You are Mr. Archie Underwood?

A. Yes.

(Testimony of Archie Underwood.)

Q. Will you keep your voice up, Mr. Underwood, so we can hear you all the way back here. What is your business or occupation?

A. Truck driver.

Q. How long have you been a truck driver?

A. Last four years.

Q. 1946 were you working as a truck driver?

A. Yes.

Q. For what company?

A. L. A.-Seattle Motor Express.

Q. What were your duties as a driver for the L. A.-Seattle Motor Express in May of 1946?

A. Delivering freight and picking it up.

Q. To any particular points?

A. All over L. A., the Harbor.

Q. By the Harbor, do you include San Pedro?

A. Yes.

Q. Did you have occasion to deliver shipments of fish from Los Angeles to the fish dealers at San Pedro? A. Yes.

Q. Just how would you do that?

A. Well, they would bring the fish in on the truck from Seattle.

Q. From Seattle?

A. Yes, Bremerton, Washington, and bring it down——

* * *

The Witness: Yes. After it gets to L. A., we are what we call heavy duty drivers, take the rigs out to the different places where the freight goes and unload them, then if they have any freight to be picked up, we pick it up.

(Testimony of Archie Underwood.)

Q. (By Mr. Schwartz): In the course of your duties as a [1462] driver, you say you had occasion to deliver shipments of fish to the dealers at San Pedro, is that right? A. Yes.

Q. Where in San Pedro would you deliver the fish? A. Down on the fish wharves. [1463]

Q. I show you Government's Exhibit No. 1 and I ask you whether that is a picture of the wharf where you delivered the fish to the dealers in San Pedro. A. It is.

Q. Now on or about May 29, 1946 did you have occasion to make a delivery of fish to the fish wharf in San Pedro?

A. If I am not mistaken, I think that is the day I was turned around and they wouldn't let me on there.

Mr. Andersen: I object to that as not responsive.

Q. (By Mr. Schwartz): Just answer yes or no. The Court: The motion is denied.

* * *

Q. (By Mr. Schwartz): Will you state what happened?

A. Well, I was in the truck coming down the street to the fish wharf and they had the picket line and one of the drivers—I was driving and I pulled up to the man who was carrying the picket banner——

Q. You picked—— [1464]

The Court: He pulled up to the man who was carrying the picket banner.

(Testimony of Archie Underwood.)

The Witness: And I asked him what goes on, and he said, "We got the place tied up."

I said, what could I do?

So I called my main office here in Los Angeles and they told me to take it to the Wilmington Ice.

Q. (By Mr. Schwartz): Do you recall with whom you had that conversation with the pickets?

A. No, I don't.

Q. How many of them were there?

A. There was four of five up above the ones I was talking to.

Q. There were four or five what?

The Court: Up above. You mean back of the one you were talking to?

The Witness: Yes, back around the wharf.

Q. (By Mr. Schwartz): Do you see the man in court to whom you were talking? Will you look around and see?

A. I wouldn't recognize him if I saw him now.

Q. You wouldn't recognize him if you saw him?

A. No.

Q. What did you do with that load of fish?

A. I took it to the Wilmington Ice at Wilmington.

Q. By the way, to whom was that fish consigned, do you recall?

A. No, I don't. There was about six different bills.

Q. Six different what? A. Bills.

Q. Bills? A. Yes.

Q. You mean six different shipments?

(Testimony of Archie Underwood.)

A. Yes.

Q. Six different consignees?

A. That is right.

Q. And they were the fish dealers at San Pedro?

A. Yes.

Q. Thereafter and for the month of June did you make any further deliveries of fish consignments to the dealers at San Pedro?

A. No, we took it to Wilmington.

Q. You took it to Wilmington? A. Yes.

Q. You mean the ice company there?

A. Yes.

Q. When again did you resume, if at all, deliveries of shipments of fish to the dealers at San Pedro, that is, to their place of business? [1466]

A. I don't remember the date but it was after the strike men was gone.

Mr. Schwartz: You may cross-examine.

Mr. Andersen: Just one question, your Honor.

Cross-Examination

By Mr. Andersen:

Q. How far is the Union Ice Company at Wilmington from this dock where the dealers have their places of business, approximately? How many miles? A. About five miles.

Mr. Andersen: That is all.

* * *

The Court: Next witness.

CARL B. TENDICK

called as a witness by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: Tendick; T-e-n-d-i-c-k; Carl B.

* * *

Direct Examination

By Mr. Schwartz:

Q. You are Mr. Carl B. Tendick?

A. I am, sir.

Q. What is your business or occupation?

A. I am a fishery marketing specialist in charge of the San Pedro office of the Fish and Wildlife Service.

The Court: Of what?

The Witness: Fish and Wildlife Service of the Department of the Interior.

* * *

Q. What are your duties as the fishery marketing specialist? [1468]

A. Well, there are two basic functions that are carried on in my office. We have conducted statistical surveys of the fisheries of California. I have been directly in charge of those statistical surveys for quite a number of years.

Q. How many years?

A. Well, I have been on this coast now for 21 years, and I have conducted the surveys for California each of those years.

Two years ago we added another function, that of collecting and disseminating market news in-

(Testimony of Carl B. Tendick.)

formation on the fisheries. That is what we call our market news service.

The Court: What was the first service?

The Witness: Statistical surveys.

The Court: Of what, of the number of fish or where they came from or what?

The Witness: The production, the number of operating units, that is, the number of fishermen, the number of boats, type of gear that they use in catching the fish.

The Court: Areas where they catch the fish?

The Witness: Areas where they catch the fish.

The Court: Type and kind and varieties of fish?

The Witness: Yes.

The Court: I see. That is your first function?

The Witness: That is my first function. [1469]

The Court: And the second one is the marketing statistics?

The Witness: Yes. The second function of market news service has been delegated largely to my assistant, Mr. Harry Hinkle who more or less supervises and manages that function.

Q. (By Mr. Schwartz): Is he directly under your supervision and control? A. Yes.

* * *

Q. What is the source, or what sources do you get your information from for the market news service?

A. At San Pedro Mr. Hinkle either goes down to the markets and actually copies the records of their purchases of fish from the fishermen.

(Testimony of Carl B. Tendick.)

The Court: Every day? [1470]

The Witness: Every day, or his secretary telephones them if he is absent from the city.

At Newport we call the dealers down there by phone.

The Court: Every day?

The Witness: Yes.

At San Diego we have what we call a market news aide who is stationed at La Jolla and that aide phones the markets in San Diego and then transmits it to us generally by teletype, radio teletype through the Navy or directly by phone.

At Santa Monica we phone the two dealers there directly.

The Court: There are only two dealers at Santa Monica?

The Witness: Only two dealers at Santa Monica.

The Court: That is fresh fish you are speaking of?

The Witness: That is fresh fish; yes.

The Court: This is not canneries?

The Witness: No, we do not get any of the data on cannery fish other than there are two of the dealers—the two dealers at Santa Monica buy mackerel for the canneries and we do get that information.

Q. (By Mr. Schwartz): Do you distinguish in your reports between the fish that is used for the canneries from Santa Monica and those——

A. No, sir, not in our published report.

(Testimony of Carl B. Tendick.)

Q. Now how are your records kept for these statistics?

A. Well, the market news statistics, we of course publish [1471] each day the deliveries from the previous day. Then at the end of each month we compile those into a monthly summary, and then we publish a monthly summary of those deliveries.

We publish that separately for the Santa Monica-San Pedro dealers, the Newport dealers and the San Diego dealers.

The Court: What items do you show on that?

The Witness: We show all the deliveries of fish.

The Court: That is, the kind and variety?

The Witness: Kind and variety.

The Court: Number of pounds?

The Witness: Number of pounds.

The Court: Price per pound?

The Witness: No, we do not get data on price.

The Court: You do not get data on price?

The Witness: Well, we sometimes get it but we are not publishing it.

The Court: In other words, you concern yourself with the flow of quantity and variety?

The Witness: That is right.

There is other information that is published in our market news service. We publish data on imports, we get reports from the shark liver auctions at San Francisco which we publish whenever there is an auction.

The Court: I mean with relation to fresh fish.

(Testimony of Carl B. Tendick.)

The Witness: I am just pointing out there is other data [1472] that we do publish in that market news service.

Mr. Schwartz: Will you mark these?

The Clerk: 34 and 35.

(The documents referred to were marked Government's Exhibits Nos. 34 and 35 respectively for identification.)

Q. (By Mr. Schwartz): Mr. Tendick, this information that you gather is broken down into species of fish? A. That is right.

Q. And the volume of fish per month?

A. That is right.

Q. Now sometime last year were you requested by the Department of Justice to compile statistics showing the species of fish and the poundage brought into San Pedro and Santa Monica wholesale fish dealers by fishing craft as reported to the market news service, Fish and Wildlife Service, San Pedro, California, for the period August 1945 through June 1946? A. I was.

Q. Did you make or have caused to be made such a compilation? A. I did.

Q. Did you submit that compilation to representatives of the Antitrust Division of the Department of Justice? A. I did. [1473]

Q. Were you requested to make the kind of—

The Court: Where did you get the data?

The Witness: I took it directly from the monthly summaries as we had published them.

(Testimony of Carl B. Tendick.)

The Court: In your published records?

The Witness: That is right. [1474]

Q. (By Mr. Schwartz): Were you requested to make the same kind of compilation for deliveries of fish to San Diego wholesale fish dealers by fishing craft as reported to Market News Service at your office for the period October, 1945, through June, 1946?

A. I was.

Q. And the same for Newport Beach?

A. I was.

Q. And did you submit those compilations to the Department of Justice?

A. I did.

Q. I show you what has been marked for identification as Government's Exhibits 34 and 35 and ask you whether those are the compilations which were submitted to the Department of Justice.

A. They are.

Q. Will you state, Mr. Tendick, how those compilations were gotten up and by whom?

A. Pardon me if I have to, perhaps, recollect and review this.

The Court: You can take your time to look at it, Mr. Tendick, if you wish.

A. I can see by the writing that the compilations, that is, the actual copying of the monthly summaries was done by my secretary. [1475]

Q. (By Mr. Schwartz): What is her name?

A. Mrs. Merle Lovell.

Q. Is she under your supervision and control?

A. Yes.

Q. Go ahead.

(Testimony of Carl B. Tendick.)

A. I also know that I checked them personally. I do wish to comment on one other statement here, one other point here, that this Market News—we have not gotten reports from one of the dealers at San Pedro. There is one that has consistently refused to give us the information. The other eleven, we do get it from them. So that this compilation——

The Court: What is his name? Somebody is going to ask that sooner or later.

A. Catalina Fish Company, I think it is.

Q. (By Mr. Schwartz): Catalina Fish Company? A. Yes.

Mr. Garrett: Is that Catalina Fish and Oyster Company?

The Witness: My understanding is it is just Catalina Fish Company.

Also, in this compilation, since it included the mackerel fish purchased by two dealers in Santa Monica for canneries, I requested those two concerns to give me their monthly purchases of mackerel that they had delivered to the canneries, and I subtracted that from the total that we had in our monthly summaries to arrive at only the mackerel and other species that [1476] were delivered to the fresh fish dealers, and went into the fresh fish trade.

I mention that because I want to make it clear that the cannery mackerel is not in this compilation.

Q. (By Mr. Schwartz): You say you personally checked those compilations. When was that check made by you?

A. Immediately after my secretary copied the figures. I added the columns; I compared it; I personally made the subtractions of the cannery mackerel; checked the monthly and also the total.

Q. Then as to the accuracy of the poundage of fish brought into San Pedro, is it a fact, then, that the poundage would be less than the total poundage because you would have to subtract the Catalina Fish Company figures which are not reported.

A. That's true.

The Court: What is that, the poundage would be less? The poundage reported?

Mr. Schwartz: Yes.

The Witness: The poundage reported, yes.

Mr. Schwartz: We offer in evidence Government's Exhibit 34 and 35.

Mr. Margolis: I have some questions on voir dire.

Mr. Garrett: May I see the summaries, also, if your Honor please? [1477]

Mr. Margolis: May I ask some questions on voir dire?

The Court: Yes.

Voir Dire Examination

By Mr. Margolis:

Q. As I understand it, these figures on Government's Exhibit 34, for identification, do not include the figures for only one company, that is, Catalina Fish—is that right? A. Yes.

Q. Is that the company of which Mr. Vitalich is the manager?

(Testimony of Carl B. Tendick.)

A. I think that is correct.

Mr. Margolis: Can we have a stipulation that that is the Mr. Vitalich who was the government witness here?

Mr. Schwartz: Yes. At least, Mr. Vitalich is connected with the Catalina Fish Company, I will stipulate to that. [1478]

A. As I said before, generally he goes down and actually copies the data from the records. Sometimes when it is inconvenient for him to go down there he telephones the individual concerns.

Q. When he goes down and copies the information from the records, he goes into the office of a fish dealer and says, "Will you show me your slips for today?"

A. That has become entirely unnecessary. They have already made out the tickets and purchases on what we call the fish and game tickets. He is familiar where each dealer keeps those tickets, and they grant him the privilege of going in and copying them, taking whatever data he wishes off of them without asking.

The Court: Now the custom is he just walks in like he belongs there?

The Witness: He just walks in and copies them and walks out again.

Q. (By Mr. Margolis): If for some reason the fish dealer on any particular day or particular period did not put all of his tags in the customary place, then your man would get only part of the information, that is right, isn't it?

(Testimony of Carl B. Tendick.)

A. That is right. [1479]

Q. Then on the days that telephone information is obtained from San Pedro, you rely entirely upon what the fish dealer tells you, is that right?

A. That's right.

Q. If the fish dealer for any reason wants to give you a wrong figure, has a personal interest in giving you a wrong figure, you don't know that, you just have to take the figure?

A. We accept the figure he gives us.

Q. There is nothing in the law which requires him either to give you any figure at all or to give you a true figure if he does give you one, isn't that so?

A. That is true.

Q. Now, with regard to Santa Monica, you get your information there always by telephone?

A. That is true.

Q. And there, too, you rely entirely upon the information that is given you, and if the figure is reported to you incorrectly by a thousand per cent, you would have no way of knowing the difference, would you?

A. Well, I wouldn't say that we could be off a thousand per cent, because we are too well informed upon what is apt to come in there.

The Court: Do you have other data concerning the poundage? Is that right?

The Witness: Surely. [1480]

Q. (By Mr. Margolis): What other information do you have concerning the poundage?

A. We have, of course, the historical records

(Testimony of Carl B. Tendick.)

of what is landed in the entire, you might say, San Pedro-Los Angeles County area for a period of years, and we know more or less what to expect.

Q. The fact is that there are tremendous variations from month to month and year to year with regard to various species of fish, isn't that so?

A. Yes. But my point is this: if there are fish coming into Santa Monica, Mr. Hinkle goes down to the markets in San Pedro, there is nine chances out of ten he is going to find out or be informed as to whether there is anything coming in at Santa Monica, and no one can deliberately say, "Well, we didn't get anything," because we would generally know that certain boats or some fish had been landed there.

Q. During a period when no fish is being delivered to San Pedro, then you would have no check on the accuracy of the figures at Santa Monica, isn't that so?

A. Well, we still contacted the San Pedro dealers, and dealers throughout that period, and we found out where fish was coming in.

Mr. Schwartz: Throughout what period?

The Witness: The period when the strike was in progress.

Q. (By Mr. Margolis): Why do you refer to that period? [1481] I didn't inquire about that period.

A. I speak of that because that was the period that there might be any question. We do always, regardless of—when there is no fish in, we have

(Testimony of Carl B. Tendick.)

had that situation several times at San Diego, when there was no fish delivered, and we would check to find out whether it was just failure of our side to obtain a report or whether it was actually true that there was no fish obtained.

Q. Do you generally keep your San Pedro and Santa Monica figures together?

A. We combine them daily, yes.

Q. And make just one report for the two?

A. Make one report for the two.

Q. Do you have separate figures for Santa Monica and San Pedro?

A. No, I do not compile separate figures for San Pedro and Santa Monica, the reason for that being that we consider—we will not publish any data that concerns less than three concerns. That would have the possibility of showing private enterprise.

Q. Do you know whether there are any publications of separate figures for Santa Monica?

A. I do not know. I don't think there are.

The Court: You say there are only two fish buyers in Santa Monica? [1482]

The Witness: Yes. There may be a few minor ones that handle small quantities.

The Court: I mean commercial?

The Witness: Yes, that handle any commercial quantities.

Q. (By Mr. Margolis): This information which is contained on Exhibit 34, for identification, was obtained, in the first instance, from monthly published summaries, is that right?

(Testimony of Carl B. Tendick.)

A. That's right.

Q. Where are those monthly published summaries?

A. Well, they are distributed to various people in the industry that are on our mailing list. We attempt to retain one copy of them in our files, but I am not certain that we have a complete file of every month.

Q. I see.

The Court: Do you file any in the library any place?

The Witness: No.

The Court: For instance, do you file one in the Municipal Reference Library at the City Hall?

The Witness: I don't think so.

The Court: Or the Harbor Department Library?

The Witness: The Chamber of Commerce at San Pedro may get a copy.

The Court: You mean they may be on your mailing list?

The Witness: Yes, they may be on my mailing list. [1483]

The Court: They are public records; you give them to anybody who asks for them?

The Witness: Yes, they are public records. We send copies for our Washington, D. C. files.

Q. (By Mr. Margolis): Both these daily or monthly summaries are mailed to all of the fish dealers, aren't they?

A. Well, to our mailing list. There are, possibly, some fish dealers that are not on the mailing list. Very few.

(Testimony of Carl B. Tendick.)

Q. Probably there are none that aren't on your mailing list, isn't that so?

A. I don't know of any that are not, offhand.

Q. Do you have the summaries for the period covered by Exhibit 34, for identification?

A. Not with me.

Q. Do you have them in your office?

A. As I say, I think there is possibly one missing. I am not certain.

Q. Would that be for just one species of fish?

A. It would be one of the monthly summaries, one of the months.

Q. Do you know what month that would be? Would that be June, 1946?

The Witness: No. I think it is February, 1946.

Q. (By Mr. Margolis): With that exception you have all of the rest of them. [1484]

A. I am pretty sure we have.

Q. You could produce them here?

A. I think we have the record for that month—we show, generally, for instance, we show March and we will show also February as comparative figures; so I think on the March one we do have a record of what was published in February.

Q. So that actually this Exhibit 34 is available in the form of about nine or ten separate single sheet summaries, the originals of which you have.

A. That's right.

Q. It would be a relatively easy matter to produce those?

(Testimony of Carl B. Tendick.)

A. With the exception that I have taken the cannery mackerel out of those summaries.

Q. Do you have a separate report with regard to cannery mackerel?

A. Only from those two firms who buy cannery mackerel—I mean who buy mackerel for the canneries.

Q. You do have a summary for that?

A. I say I have got a separate report from those two firms.

Q. When did you get that?

A. At the time that it was requested by the Department of Justice. [1485]

The Court: In connection with the preparation of this data?

The Witness: In connection with the preparation of this data.

Q. (By Mr. Margolis): How about tuna, is tuna sometimes delivered to Santa Monica and sold to the cannery?

A. Not that I know of. They may purchase some from their regular market boats and turn it over to the canneries, but they are not, as I understand it, regularly assigned by the canneries to purchase for them.

Q. Now this Exhibit 34, to make it quite clear, contains no references—I will withdraw that.

This Government's Exhibit 34 for identification excludes all figures with relation to fish sold directly or indirectly to the canneries, is that correct?

A. That is right.

Q. So take, for example, in the month of June

(Testimony of Carl B. Tendick.)

1946 it is entirely possible that the total amount of fish delivered during that month to the canneries and the fish dealers was greater, say, than in May, April, March or February of that year, is that right? . A. It could be possible.

The Court: Would you have that data in your office?

The Witness: No, I don't.

The Court: Do you gather data as to the fish delivered to the canneries?

The Witness: In our, what we call our, historical statistics we rely entirely upon the State's collection of the [1487] raw material.

The Court: So at the end of the year you take the State's figures on the amount of fish delivered to canneries?

The Witness: Yes, that is right.

The Court: All right.

Q. (By Mr. Margolis): Directing your attention for a moment to Exhibit 35 for identification. That is the San Diego sheet. A. Yes, sir.

Q. Now that information is obtained always by telephone, is that right?

A. Yes. On a few occasions Mr. Hinkle has been down there and has gone to the individual dealers himself, but that is not commonly done.

Q. The practice is to get it by telephone?

A. Yes.

Q. And again, as in the case of Exhibit 34, you rely upon the information that is given you, is that right? A. That is right.

(Testimony of Carl B. Tendick.)

Q. All of your other testimony with regard to exclusion of cannery fish which you gave with regard to Exhibit 34 is also applicable to Exhibit 35, is it not? A. So far as we know it is; yes.

Q. What do you mean by so far as you know?

A. Well, there again it is quite possible that a wholesale [1488] fish dealer might buy from his particular boats. We will say he might buy more yellowtail than he desires for his immediate customers, and if he so desires he can turn around and sell it to a cannery.

Q. I notice, for example, that with respect to yellowfin, that in the month of June 1946 more than twice as much yellowfin is reported on here as in any other month. A large part of that might have gone to the canneries, is that right?

The Court: At San Diego?

Mr. Margolis: I am talking about San Diego. I am referring to Exhibit 35.

The Witness: It could have.

The Court: Do they have canneries in San Diego?

The Witness: Yes.

The Court: How many, do you know?

The Witness: There were four operating at that time. There are five now.

Q. (By Mr. Margolis): So that if we compare Exhibit 34 with Exhibit 35 we can say with regard to Exhibit 34 that that is only fish sold to the fresh fish dealers, as far as the information you have got, to the extent that it is accurate, whereas Exhibit 35 may include cannery fish?

(Testimony of Carl B. Tendick.)

A. Very little, if it does.

Q. You don't know if it does. [1489]

A. I don't know.

Q. So it may include cannery fish, is that right?

A. It could include a small percentage.

Mr. Margolis: We will object to the document.

The Court: Let me see the documents.

(The documents referred to were passed to the court.)

The Court: On what ground?

Mr. Margolis: On the ground that there is an insufficient foundation laid, that it is obvious that they are hearsay, that it cannot be ascertained with regard to exhibits exactly what they include or do not include; there is no basis for relying upon the figures because of the fact that they are obtained from persons who at least during a part of the time might have had an interest in giving erroneous information concerning the amount of fish which was delivered to them, and who were not obligated by law or otherwise to give accurate information.

Also on the ground that the original records are not bulky and they are available, although I want to say, in all frankness, that we would also object to the original records. But if anything is to be introduced it ought to be the original records.

The Court: The original records you have in your office from which you compiled this, do you?

The Witness: Yes. [1490]

(Testimony of Carl B. Tendick.)

The Court: You have no objection to making those available to counsel who want to see them?

The Witness: Be glad to.

The Court: Very well. The objection is overruled. Exhibits 34 and 35 are admitted in evidence.

(The documents referred to were received in evidence and marked Government's Exhibits 34 and 35.)

The Court: Do any counsel desire to see the original reports from which he compiled these figures? [1491]

* * *

The Court: * * * Any further questions?

Mr. Margolis: I am not through cross-examining this witness.

The Court: I thought you had finished.

Mr. Margolis: I had taken the witness on voir dire.

Mr. Schwartz: I am through on direct and he can take him on cross-examination now.

The Court: All right. Counsel, would you prefer to have this witness return next week and bring with him the copies of the documents for your cross-examination?

Mr. Margolis: I think that we can get a large part of it down now and it may not be necessary. I don't want to keep the witness, or make him come back if it is not necessary.

The Court: You are entitled to have the other documents.

(Testimony of Carl B. Tendick.)

Mr. Margolis: I would like to cross-examine him now and perhaps we can excuse him.

The Court: All right. [1496]

* * *

Cross-Examination

By Mr. Margolis:

Q. When were you asked to prepare Government's Exhibits 34 and 35?

A. As I recall, it was along in July or August.

Q. Of 1946? A. Of 1946.

Q. Did you receive the communication with regard to this matter by mail, written form, by telephone or by someone talking to you in person?

A. As I recall, it was requested in person.

Q. It was a personal conversation between yourself and somebody else? A. Yes.

Q. With whom did you talk?

A. As I recall, it was Mr. Schwartz.

* * *

Q. (By Mr. Margolis): Was there more than one conversation? A. I think there were two.

Q. Now I want to limit myself first of all to the first conversation. Will you tell us to the best of your recollection what Mr. Schwartz said to you and what you said to Mr. Schwartz concerning this matter?

A. As I recall, the first conversation was in my office in which he asked me directly about the information that we collected with respect to the market fish, and our data on that.

(Testimony of Carl B. Tendick.)

Q. I wonder if instead of telling us the subject matter if you would try to summarize what Mr. Schwartz said.

The Court: I think that is what he is doing counsel.

Mr. Margolis: He said the subject of the conversation was with respect to something. If I may suggest, if you start by saying, Mr. Schwartz said, and then if you could go on from there.

The Witness: I would hesitate to attempt to even quote him directly. [1498]

Q. (By Mr. Margolis): Summarize what he said.

A. He wanted to know how we obtained the data and whom we got it from, where we published it, and to whom it was distributed, and such general information.

Q. What data did he ask you about?

A. He asked me about the data, what data was available with respect to the San Pedro-Santa Monica—at first he was particularly anxious to get San Pedro separately, and I told him that we did not have San Pedro separately, that we included the Santa Monica dealers in our report with the San Pedro ones.

I was also asked regarding the period of time for which we had published the data for San Diego and for Newport.

Q. Did he ask you for San Diego and Newport also, is that right?

A. As I recall, he wanted it for a longer period.

(Testimony of Carl B. Tendick.)

He wanted it for a long enough period so he could have comparative data with previous years, but we did not start the service until, I think it was, August of 1945, consequently we had no comparative data prior to that time. That was August 1945 for the San Pedro area, and I think it was several months later at San Diego, and we did not start Newport until later than that even. And he inquired particularly about dates we started it and what data was available.

Q. When did you start preparing your material for Newport? [1499]

A. Offhand. I don't remember. I think it was in May 1946.

Q. May of 1946? A. Yes.

Q. Were you asked to prepare the material for Newport Beach for a more limited period than the material for the other areas?

A. Well, I had advised him what period was available and what period we had covered, and that was the only thing that we could supply.

Mr. Margolis: At this point it is indicated, your Honor, that we will have to have the records, and I would like to ask—I had hoped that we could avoid it—but I would like to ask that the witness be directed to return at some time convenient to the Court and possibly to the witness.

The Court: Of course these are matters that are published of which you can take judicial notice and you can use the reports that he has in connec-

(Testimony of Carl B. Tendick.)

tion with any argument that you wish to make, but if you feel that it is necessary——

Mr. Margolis: I do feel that it is necessary, your Honor.

The Court: To test the correctness of these, that this witness who has made these compilations has produced——

Mr. Margolis: I believe it is necessary, your Honor, and I would like to have him bring the records from the inception [1500] of the time that the records were being prepared. I understand that that only takes us back to some date in 1945.

The Court: That is the regular compiled reports that he makes?

Mr. Margolis: That is right, the regularly compiled reports from the beginning of their preparation through the month of June 1946 for San Pedro and Santa Monica, San Diego and Newport Beach.

May I ask one more question?

Q. Those are the three reports that you have?

A. Yes.

Q. Which cover the Southern California area?

A. That is right.

Q. You have no other reports? A. No.

The Court: Can you bring those when convenient?

The Witness: I think so.

I would like to ask one question. You wish the monthly summaries? You do not wish copies of the daily reports?

(Testimony of Carl B. Tendick.)

Q. (By Mr. Margolis): Are the daily reports very bulky?

The Court: I think the monthly summary is sufficient.

The Witness: They are.

Mr. Margolis: All right. We would like to have the daily reports, if we might, for the year 1946 for San Diego [1501] and Newport Beach. Could that be done?

The Court: I will not order him to bring those. Just bring up your monthly reports from the inception of what you call the market service.

The Witness: Market news service.

The Court: Market news service from month to month from the time that you began it up until now when you finished your last report.

The Witness: All right.

The Court: And Tuesday?

Mr. Margolis: That of course would be satisfactory. However, I do have a reason for asking for the daily reports from those two areas, your Honor.

The Court: Yes, no doubt. I think I understand it, but I think you should be limited to the other reports.

Mr. Garrett: May the record show that we join in that request, your Honor.

The Court: The record will show that you join in that request and object to my order.

Mr. Garrett: Yes, your Honor.

(Testimony of Carl B. Tendick.)

Mr. Margolis: May I ask this, if it isn't too inconvenient, could we ask at least that the witness bring along a month or two of those reports? We don't want to inconvenience him but we would like to have some of those daily reports, let's say, even for the months of April, May and June, or [1502] May and June, some of them?

The Court: You mean May and June 1946?

Mr. Margolis: Yes. That is what we are talking about. They are all on one sheet, I believe.

Q. That is right, isn't it? A. Yes.

The Court: A daily report?

The Witness: Yes.

Mr. Margolis: It is all one sheet.

Q. Do you issue one on Sunday too?

A. No, we only issue them five days a week.

* * *

Mr. Margolis: I would like to reserve further cross examination, your Honor.

The Court: Tuesday at 2:00 o'clock?

The Witness: That will be all right.

The Court: Very well. You will return at that time with those documents.

The Witness: Yes.

The Court: Further cross examination will be reserved. You may be excused now. Return then, will you?

GEORGE F. NAYLOR

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk. Your name?

The Witness: George F. Naylor.

The Clerk: Your address?

The Witness: 208 Emerald, Balboa Island.

Direct Examination

By Mr. Schwartz

Q. You are Mr. George F. Naylor? [1505]

A. That's right.

Q. What is your business or occupation, Mr. Naylor?

A. I am a wholesale fish dealer.

Q. Where? A. At Newport Beach.

Q. How long have you been in the wholesale business? A. Since 1937.

Q. Continuously at the same place?

A. Yes.

Q. Will you state what kind of business you conduct at Newport Beach?

A. We buy fish from the fishermen, and in turn distribute them to other wholesale dealers, and to some restaurants and hotels.

Q. Where are your customers for the most part located?

A. Well, our customers, our hotel and restaurant customers and markets are in Newport Beach,

(Testimony of George F. Naylor.)

Balboa, and Laguna; our wholesale customers are in Los Angeles, Arizona, Utah and Washington. Also in Northern California, San Francisco, Oakland, Sacramento.

Q. Will you relate the conduct of your business as it regards the purchase of fish?

A. Well, we buy our fish from the fishermen at whatever the market price happens to be, and in turn we sell them at whatever the market is. [1506]

Q. Your place is known as the Bayside Fish Market, is it not? A. That's right.

Q. What is your relationship to that Bayside Fish Market?

A. I operate the Bayside Fish Market.

Q. Is it a copartnership, a corporation, or an individual company?

A. Bayside Fish Market is an individual company.

The Court: You own it?

The Witness: That's right.

The Court: Your own and operate it.

The Witness: That's right.

Q. (By Mr. Schwartz): Where is the Bayside Fish Market located?

A. At 2800 LaFayette, Newport Beach, on the water front.

Q. On the water front? A. Yes.

Q. Do you have a fish landing there for boats to tie up at? A. That's right.

(Testimony of George F. Naylor.)

Q. Do you operate any boats of your own?

A. Yes, sir.

Q. How many?

A. At the present, four. [1507]

Q. How large are these boats?

A. Well, they vary from, I think, 26 feet up to 51 feet in length.

Q. How many members are on the crews of these boats?

A. Well, some of the crews—some of the boats operate with just one man in the crew, and others operate with as many as seven.

Q. On what basis do these people work, as far as their compensation is concerned?

A. Well, they sell their fish to us just the same as any other fisherman would sell them to us, and I take share for the boat and either half a share or share for the gear that is on board, depending on the type of gear that they use.

Q. The fishermen, are they paid in wages or paid on a share basis?

A. Paid on a share basis.

Q. Do those fishermen work for you as employees?

A. Yes—no, not as employees, no.

Mr. Margolis: Just a moment, your Honor. I didn't have a chance to object to the question. I move to strike the answer for the purpose of making the objection. I object to the question on the ground that it calls for the opinion and conclusion

of the witness. What is an employee is a conclusion of law. [1508]

The Court: The objection is overruled.

* * *

Q. (By Mr. Schwartz): How do they work for you, on what basis?

A. I give them the boat to operate, and they pay me the share; I don't pay them. In that sense they are not employees.

Mr. Andersen: I move the latter be stricken as a conclusion of the witness, your Honor.

Mr. Schwartz: I submit it is competent, if the court please.

The Court: It may be stricken. I think the jury are here to draw a conclusion in connection with it. Whatever the facts are, they can decide them.

Q. (By Mr. Schwartz): About how many boats in the course of a year do you buy fish from, Mr. Naylor? A. That is difficult to say.

Q. Approximately.

A. Oh, I would say during the course of a year we probably buy from 50 different boats.

Q. Varying sizes? A. Yes.

Q. Are all of those boats stationed at Newport, or are they from other ports as well?

A. They are from other ports as well as Newport. [1509]

Q. How is the fish which you state you sell to customers in points outside of the State of California handled as far as transportation and shipment is concerned?

(Testimony of George F. Naylor.)

A. Well, we ship—outside of the State, you said?

Q. Yes.

A. We ship by American Railway Express or by truck lines.

Q. How is it accomplished?

A. How is that?

Q. How is the transportation accomplished?

A. We deliver the fish to the Railway Express Company.

Q. Where?

A. In Newport Beach or Los Angeles or Santa Ana, or—we deliver to truck companies in Los Angeles for reshipment.

Q. Do these truck companies or Railway Express Company come to your place of business for pick-up? A. No.

Q. Do you specialize, as far as sales are concerned, in any particular line of the fish business?

A. No, we buy all types of fresh fish.

Q. With specific reference to your dealing in shark livers, what do you say as to the nature of your business?

A. That is a part of our business, and we do buy and sell them, but we don't particularly specialize in them.

Q. Will you state—— [1510]

The Court: What about anchovies for bait?

The Witness: We buy those, too.

The Court: Is that usually bought and sold by fresh fish dealers?

(Testimony of George F. Naylor.)

The Witness: No.

The Court: How come you do?

The Witness: Well, I do it because I just happen to have trade that buys it.

The Court: Where is that trade? Do you ship it out?

The Witness: We deliver usually to the bait stands up and down the beach. That is our principal source of sale.

The Court: That is, to the commercial boats?

The Witness: No, not to the commercial boats. You have seen these little bait stands all along the highway that buy anchovies and sell them to the sport fishermen, as a rule?

The Court: You mean with those big signs: Stop here and get your bait and catch a fish?

The Witness: That's right.

The Court: All right. Let me see if I understand that now. You buy anchovies—they are dead?

The Witness: That's right.

The Court: They are not live fish.

The Witness: No.

The Court: They are fresh.

The Witness: Yes. [1511]

The Court: And you sell them up and down from where to where?

The Witness: Just along the coast there, from Belmont Shores down as far as—down through Laguna and that way; sometimes further to San Clemente or Oceanside.

(Testimony of George F. Naylor.)

The Court: Is that the general and usual practice of fresh fish dealers?

The Witness: Well, I don't think it is, no.

The Court: In other words, do you have any competition?

The Witness: Yes, we do; from the fishermen themselves.

The Court: They sell it.

The Witness: They also do that.

Q. (By Mr. Schwartz): Where do you sell your shark livers?

A. Well, in the past we have principally sold to the Washington Laboratories in Seattle.

* * *

Q. (By Mr. Schwartz): How many people are employed at your place of business?

A. Do you mean how many people are employed in my fish market?

Q. Yes.

A. There are five besides myself. [1315]

Q. How did you conduct the sales end of the business?

A. By telephone or telegraph.

Q. Now in May of 1946 were you conducting your business along the lines of which you have just testified to? A. Yes.

Q. Did anything occur towards the end of May 1946 which interrupted that general course of business?

A. Yes. I was presented with a contract by Mr. Phelps and Mr. McLauchlan.

(Testimony of George F. Naylor.)

Q. Are those gentlemen in the court room?

A. They are.

Q. Will you point them out, please?

A. Mr. Phelps is the gentleman in the tan shirt.

Mr. Schwartz: Will you stand up?

(The defendant Phelps stood.)

The Witness: And Charlie McLauchlan is next to him.

(The defendant McLauchlan stood.)

Mr. Schwartz: May the record show that the witness identified defendants Phelps and McLauchlan.

The Court: So ordered.

Q. (By Mr. Schwartz): I show you Government's Exhibit No. 3 and ask you whether you received a contract like that from defendants Phelps and McLauchlan at the time of which you just testified? [1516]

A. (Examining document) Yes.

Q. Now what was said at the time this contract was presented to you?

A. They presented me with the contract and told me——

Q. Who said what? Let's get it straight.

A. All right. Mr. McLaughlan and Mr. Phelps presented me with a contract. Mr. McLauchlan told me that all of the dealers in Southern California were to be presented with this contract and he thought that they would sign up.

I told him that I would have to look the contract

(Testimony of George F. Naylor.)

over and submit it to my attorney before I would give him my answer on it.

That was virtually all of the conversation at the time.

Q. Did Phelps say anything at the time?

A. I don't remember whether he did or not. Probably he did, but I don't recall what it was.

Q. How long did this whole incident take place?

A. Probably 10 or 15 minutes.

Q. Do you recall approximately what date that was that the contract was presented to you?

A. I don't. It was towards the latter part of May.

Q. Did you sign that contract?

A. I did not.

Q. Now thereafter what, if anything, occurred with [1517] reference to the conduct of your business?

A. Well, a few days later Mr. McLauchlan came back to see me and asked me if I had signed the contract, and I told him that I hadn't signed it and that I hadn't heard from my attorney at that time.

Then he came back and I believe Mr. Phelps was with him the next time and asked me if I had signed it, and I told him then that my attorney had advised me that in his opinion it was a price-setting agreement and that it was illegal, and that I couldn't sign it.

Q. What did he say?

A. He said, "Well, that's too bad."

Then within a few days, I have forgotten just

(Testimony of George F. Naylor.)

how long it was, they placed a picket line in front of my place of business and on the waterfront side a rowboat.

Q. Will you describe the picket line in front of your place?

A. Well, there was about two or three men from the union in front of my building that would stand there and direct my customers down to my competitors' places of business.

Q. Did you see this? A. Oh, yes.

Q. With your own eyes? A. Yes, sir.

Q. Did you hear these requests? A. Yes.

* * *

The Witness: And they directed my customers down to my competitors' markets, the Cooperative Fishermen's Market was one and the other was Larry Fisher, and the third one was the Western Cannery, that was all buying fresh fish at that time, and told them that we were unfair to the union and that these other firms were fair.

Q. (By Mr. Schwartz): Were they successful in diverting some of these customers?

A. They were.

Q. You said something about a boat in front of your place.

A. Yes. Then they had a boat on the waterfront side of my place, and any boat that would attempt to come up to the dock they would warn them that we were unfair and that they should deliver their fish to the same competitors down the

(Testimony of George F. Naylor.)

bay and—well, I think that essentially that was what they said. [1509]

Q. Did this boat have a sign or placard of any kind?

A. At first they didn't have a sign or placard. Towards the end of their picketing they did have a sign.

Q. What did the sign say, if you recall?

A. It said, "Unfair to Union Labor." I believe that was what it said. I am not sure about that.

Q. How long did that situation obtain with regard to the pickets in front and this boat on the water side?

A. Well, as I remember, it continued right through June. Towards the end of June they took the picket line off, I believe. I don't recall the exact date.

Q. During that period of time did boats come up to your place of business and tie up regularly as they had done before?

A. Well, some of our boats did, our own boats, the boats that we owned, or that I owned and operate, and discharged their fish.

Q. Is that all?

A. Well, other boats, even our own boats, other boats that I operate or own outright, came in and they were permitted to discharge the first load when the picket line was up there and after that they were told that they couldn't discharge any more fish or they would be blackballed and wouldn't be allowed to sell their fish at any other place.

(Testimony of George F. Naylor.)

Q. What about other boats than you own?

A. I believe there were a few other boats that went through the picket line and delivered fish to us.

Q. Approximately what percentage of the purchases by your company is represented by the purchases from the boats in which you have an interest?

A. Well, I would say that there is about 40 per cent——

Mr. Garrett: Objected to as calling for hearsay.

The Court: Objection overruled. A man ought to know his own business.

Mr. Garrett: I think he does. My objection is based upon the best evidence and hearsay objection on the theory that his books are the best evidence in this.

The Court: The objection is overruled.

The Witness: About 40 per cent. [1521]

Q. (By Mr. Schwartz): Now of that 40 per cent which is regularly represented in your purchases, or normally, was there any reduction during the month or so that the pickets were at your place of business?

A. Oh, yes, a very material reduction. The fact of the matter is I think only one of our boats continued to deliver fish to us.

The Court: That is, one of the boats you own?

The Witness: That is right.

The Court: That is, only one of the boats you own of not only those boats but all the other boats who deliver fish to you?

(Testimony of George F. Naylor.)

The Witness: No, I wouldn't say that. There were some other boats that were independent boats that delivered to us, but very few of them.

The Court: I do not understand your answer.

Mr. Schwartz: I don't either.

The Witness: We have a number of boats of our own.

The Court: How many?

The Witness: At that time we had six.

The Court: And one of those delivered?

The Witness: And one of the six delivered fish to us.

The Court: The others did not?

The Witness: The others did not. [1522]

The Court: All right.

Q. (By Mr. Schwartz): What happened to the other five?

A. Well, as I told you, the boats came in and were allowed to unload the loads that they brought in when they hadn't known the strike was in progress.

Q. Were they laid up or out fishing or selling elsewhere or what?

A. No, some of them continued to fish.

Q. Where did they sell their fish?

A. Some of them disposed of their fish to the other dealers.

Q. Now, then, as to the other 60 per cent of your business which is represented by purchases from boats other than yours, was there any diminution in that business?

(Testimony of George F. Naylor.)

A. Oh, yes. We received very little fish from those boats, practically nothing. At first they delivered us a little fish and then as the strike progressed they just dropped away one by one until I think at the last we didn't have any independent boats delivering fish—oh, yes, we had one.

The Court: You had one?

The Witness: Yes.

The Court: Who delivered all through the month?

The Witness: That is right. [1523]

Q. (By Mr. Schwartz): At the time that you were presented with a contract such as Government's Exhibit No. 3, which I have shown you, were you presented with a price list by the union?

A. I don't believe that at the time I was presented with that price list. I think that it was presented to me the day following or some such thing.

Mr. Schwartz: Will you mark this?

The Clerk: No. 36.

(The document referred to was marked Government's Exhibit No. 36 for identification.)

Q. (By Mr. Schwartz): I show you what has been marked for identification as Government's Exhibit 36 and ask you whether that is the price list which you received either from Mr. Phelps or Mr. McLauchlan.

A. Well, now, I won't say that I received this from either Mr. Phelps or Mr. McLauchlan because this was delivered to my market when I was out,

(Testimony of George F. Naylor.)

so I wouldn't definitely say that either Mr. Phelps or Mr. McLauchlan delivered this.

The Court: When was it left at your market?

The Witness: This was left at the market I think a day or two after the contract was presented to me.

The Court: A few days afterwards?

The Witness: Yes. [1524]

Mr. Schwartz: Will you mark this?

The Court: Does that have a number?

Mr. Schwartz: This one is No. 36 and we now offer it in evidence.

Mr. Margolis: Objected to on the ground of insufficient foundation, in addition to the other standing objection.

The Court: You just handed the Clerk another document.

The Clerk: No. 37.

(The document referred to was marked Government's Exhibit No. 37 for identification.)

* * *

The Court: No, I do not think there is sufficient foundation laid.

* * *

Mr. Margolis: I might suggest this, your Honor—this [1525] is probably not the appropriate time to make the request but it might be made and might save some time if you have an inclination to grant it—we are going to make a request for the production of the books in connection with the testimony

(Testimony of George F. Naylor.)

of this witness, and if he were to bring them with him it would save time.

The Court: No, there is certainly nothing in the record now which would warrant me to require this witness to produce his books.

Mr. Margolis: May I state what we have in mind? This witness has estimated that about 40 per cent of the fish which he purchases is from his own boats. We have reason to believe that——

Mr. Schwartz: Just a minute. I object to anything which they have reason to believe.

The Court: Yes, I think that is right. I think you had better just state your obligation without stating what you believe.

Mr. Margolis: I am not objecting, I say that we cannot cross-examine on this estimate without seeing at least that portion of the books which relate to his purchases of fish.

The Court: Well, counsel, the situation with this witness is that he is a fish dealer, he owns his own business, he is in a different position than if he were running some large corporation. I think a man running his own business [1526] can testify about what percentage he buys here or there, and so forth, without producing his books.

At the present state of the record your request is refused. [1527]

* * *

Mr. Garrett: Now Mr. Law, my accountant, who I was unable to locate, is in court. May I ask that the time for our inspection of the documents be-

(Testimony of George F. Naylor.)

hind the compilation of the Railway Express Agency, the Los Angeles and Washington Express and the West Coast Fast Freight, be extended to include Monday? Mr. Law may be able to finish tomorrow, but tomorrow is only half a day.

The Court: Yes. They may be extended to include Monday as far as Mr. Law is concerned, or as to the other defendants. [1533]

* * *

Mr. Schwartz: Your Honor, when we adjourned last Friday we had Mr. Naylor on the stand. We have a fisherman here whom I would like to put on at this time if it is all right with the Court.

The Court: You mean out of order?

Mr. Schwartz: Yes.

The Court: You may do so. [1537]

Mr. Margolis: No objection.

The Court: What is his name?

Mr. Schwartz: I. D. Anderson.

IRVAN D. ANDERSON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Anderson, what is your business or occupation?

(Testimony of Irvan D. Anderson.)

A. Well, I work on a boat that collects bait for sport fishermen.

Q. Where? A. Out of Newport Harbor.

Q. How long has that been your occupation?

A. This is my third season.

Q. On what boat do you work? A. Cirio.

Q. Who owns the Cirio?

A. Ray Kimball. [1538]

* * *

Q. (By Mr. Schwartz): How are you compensated for your labor or efforts on the boat?

A. Share basis.

Q. Will you describe how that works?

A. Well, there is five of us, four including the captain, and then there is a net share.

The Court: Counsel, unless it is different from the others, why go into that? It is merely cumulative.

Mr. Schwartz: Very well.

Q. Is it the same as fishermen generally work on a share basis?

A. I think they do, to my knowledge.

Q. Are you a member of an organization which calls itself Local 36, IFAWA? A. No, sir.

Q. Were you ever requested to become a member of that union? A. Yes, sir.

Mr. Margolis: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled. The motion to strike is denied.

(Testimony of Irvan D. Anderson.)

Mr. Margolis: May we have a running objection, your Honor? [1539]

The Court: Yes.

Q. (By Mr. Schwartz): When were you so requested to join that organization, Mr. Anderson?

A. Well, I think it was last—very near during all of last summer, several different times.

Q. Who requested you to become a member of that organization?

A. Well, it was a fellow by the name of McLauchlan, as near as I know, Charlie McLauchlan.

Q. Do you see him here in the courtroom?

A. Yes, sir.

Q. Will you point him out?

A. Yes, sir. Sitting right down there.

Mr. Schwartz: May the record show that the witness indicated the defendant McLauchlan.

Q. Now will you state the circumstances under which that occurred?

A. Well, in the beginning of it I was working at the cannery before I started and they had—I don't know whether that come under the same head or not, and then I went on the fishing boat and they even used to meet us as we come in and tell us we ought to join the union. [1540]

Q. Who is they? A. Sir?

Q. You say they used to meet you?

A. Well, him would meet us, and then there was another fellow approached us, I don't know what his name was.

Q. All right. Go ahead. What was said?

(Testimony of Irvan D. Anderson.)

A. Well, they just asked us, told us we better join the union. We didn't think we should join, because we don't see why we should join a union when we fish live bait.

Q. What did he say?

A. He seemed to think we should join. I don't know for what reason that we should.

Q. Subsequently what happened, if anything, in regard to that.

A. Well, just repeatedly he would come down there and tell us we should join the union.

Q. Did you ever join? A. No, sir.

Q. Did you ever make any payments to Mr. McLauchlan or any other people connected with that organization? A. No, sir, I did not.

Q. Did anyone on your behalf make any payments? [1541]

* * *

Q. (By Mr. Schwartz): Did you ever pay any picket fees to members of the union, of Local 36?

A. Yes, sir.

Q. Will you state the occasion in that regard?

A. Well, our captain was sick in bed and we was just running as usual, and we went over there one day on a pay day, and he said there is so much held out for picket duty, and we couldn't figure out what would be the idea of us paying any picket duty when we wasn't in the union, and he said that is the way they was all doing, and he wanted to do it rather than have any trouble. So that is the

(Testimony of Irvan D. Anderson.)

way it was paid, and he paid it, and then it was taken out of our shares.

Q. How much was that share of yours?

A. I don't remember exactly, sir.

Q. Approximately?

A. I think it was a dollar or two a day for each share, and there was seven and a half shares.

Q. Were you given a clearance card?

A. Yes, sir. [1542]

Q. By whom?

A. I think they was given to the captain of the boat and he gave them to us.

Q. Do you have that card with you?

A. I don't know whether I have or not.

The Court: With you?

The Witness: I don't know whether I have or not.

Q. (By Mr. Schwartz): Will you see?

A. Yes, sir, I have.

Mr. Schwartz: Will you mark this, please?

The Clerk: 38.

(The document referred to was marked Government's Exhibit No. 38, for identification.)

Q. (By Mr. Schwartz): I show you what has been marked as Government's Exhibit 38, for identification, and ask you whether that is the clearance card you received. A. Yes, sir, this is it.

Mr. Schwartz: We offer it in evidence as Government's Exhibit 38, your Honor.

The Court: Admitted. [1543]

(Testimony of Irvan D. Anderson.)

Cross-Examination

By Mr. Andersen:

Q. How long have you been a fisherman, sir?

A. This is the third season.

Q. Have you always fished on the same boat?

A. Yes, sir.

Q. And for the same skipper?

A. Yes, sir.

Q. And with about the same size crew?

A. Yes, sir.

Q. And at the same place? A. Yes, sir.

Q. And are you familiar with the way the other boats operate, too?

A. Well, I think I am.

Q. Do they all operate on the same general basis; do they? A. Yes, sir.

Q. Just what do you do about the boats?

A. Well, I am just one of the crew.

Mr. Schwartz: Boats or boat?

Mr. Andersen: The boat.

The Witness: I am just one of the crew. I handle the net on the stern.

Q. (By Mr. Andersen): What else do you do aboard the [1544] vessel?

A. Whenever we make a set I have my share to do. There is four of us works the net.

Q. That is, you work with your hands, do you?

A. Yes, sir.

Q. There are five other members of the crew, aren't there? A. Yes, sir.

(Testimony of Irvan D. Anderson.)

Q. Do you ever do any work that you don't get paid for?

A. Well, I don't know how to explain that to you. We take care of our net, sir, that is just, you know, part of the line of duty.

Q. What do you mean part of the line of duty?

A. We have our net to tan and patch, but we don't get paid for it.

Q. Who paints the boat? A. We do.

Q. Do you get paid for that? A. Yes, sir.

Q. Who keeps the boat in seaworthy condition?

A. Ray Kimball.

Q. Do you assist in that work?

A. Yes, sir.

Q. How do you get paid for that, if you do?

A. Well, we do that during the winter months, and he just gives us \$5 a day for getting it ready to operate in the [1545] spring when the season comes on.

Q. As a matter of fact, during the fishing year you are either fishing or getting the boat ready to fish, aren't you?

A. Well, no, there is a period through the winter months that we don't have nothing to do.

Q. You are waiting for the fishing season to begin, is that correct?

A. We have been fishing now about two weeks, sir.

Q. I mean during this period, during the winter months. When you say you have nothing to do, during this time do you go down to the boat?

(Testimony of Irvan D. Anderson.)

A. No, sir, not unless they tell us we are going to have it on the ways or something.

Q. Unless there is some work to do about getting the hull ready, is that correct?

A. Yes, sir.

Q. So during that period of time during the winter months—how long is it, by the way?

A. It will run between two and a half to three months. [1546]

Q. During that time you were standing by waiting for the season to begin, is that correct?

A. Yes, sir.

Q. Now all of your work aboard the vessel, as I understand it, is work which we will call manual labor, is that correct?

A. Yes, sir.

Q. That is, it is laying out the nets, taking the nets in, handling the fish on board and brailing the fish out?

A. Yes, sir.

Q. Putting them in boxes, if you put them in boxes?

A. We have tanks on the boat. We just put them in live bait tanks.

Q. You have live bait?

A. Yes, sir.

Q. In other words, you put them in the tanks?

A. Yes, sir.

Q. And maintain them alive aboard the vessel and then you sell them to other boats in the harbor, is that correct?

A. That is right.

Q. Or to bait dealers on shore, is that correct?

A. Yes, sir.

Q. And the fish you usually sell to the bait deal-

(Testimony of Irvan D. Anderson.)

ers on shore, I assume that is a sort of a surplus that you haven't been able to sell to the other boats, is that correct? [1547]

A. Well, unless we bring them in to a receiver. When bait is hard to get we kind of have a receiver and we will put the bait in there so the boats will bait out there the next morning.

The Court: What do you mean, a receiver? That is a tank anchored out there?

The Witness: Yes, sir.

Q. (By Mr. Andersen): You occasionally bring fish that is sold to the market as fresh fish, don't you?

A. Well, we don't do very much of that. Once in a great while we get a chance to run out and get a few albacore, but if we do that that is extra outside of our bait.

Q. But you get paid on the same basis?

A. Yes, sir.

Q. In other words, your only method of compensation, generally speaking, throughout the year is a share, that is, a proportion of the proceeds of the sale of the fish, isn't that correct?

A. That is right.

Q. And you have no other means of income?

A. No, sir.

Q. All of your income therefore is derived from this fish industry, fishing for bait?

A. That is right. [1548]

Q. Do you ever catch any fish that you sell to the canneries?

(Testimony of Irvan D. Anderson.)

A. Not last year. The year before we hauled for one of the canneries, but last year we didn't have no canneries.

Q. That is, I assume, is when you have a sort of stroke of fisherman's luck where there is some fish running, is that correct?

A. Not as a rule. The bigger fish tear our nets up.

Q. You use this small half-inch net, I assume?

A. Yes, sir.

Q. Now with respect to joining the union, how many times did Mr. Lauchlan talk to you?

A. Several times.

Q. How long have you known Mr. McLauchlan?

A. Two or three years, I think.

Q. You are both neighbors there, are you?

A. Yes, sir; we are on speaking terms.

Q. But did you know each other before you were a fisherman? A. No, sir.

Q. You knew he represented the union, did you, or thought he did? A. Yes, sir.

Q. In your conversations, I assume they were always very friendly conversations? [1549]

A. Yes, sir.

Q. And what he tried to do was to convince you of the position of the union in relation to fishing and tried to convince you that you should join the union? A. That is right.

Q. And you used to discuss, we will say, your ideas as to whether you should join or whether you

(Testimony of Irvan D. Anderson.)

shouldn't join, and that is about the sum and substance of it, isn't that so?

A. Well, he would ask me and—well, all of us there, and we couldn't see where we could. That was the general conversation. He wanted us to join and we couldn't see it that way.

Q. And you never did join? A. No, sir.

Q. But I mean all of your relations with Mr. McLauchlan were very friendly, weren't they?

A. Yes, sir.

Q. As well as anyone else from the union who may have been with Mr. McLauchlan?

A. We figured that was his means of making a living the same as ours was fishing, so why should we have any downfall on him?

Q. You knew, of course, that Mr. McLauchlan was also a fisherman?

A. I didn't know that he was a fisherman; no, sir. [1550]

Q. Did you ever ask him? A. No, sir.

Q. Have you ever seen him fishing?

A. No, sir.

Q. Have you ever asked him if he was a fisherman? A. No, sir.

Q. By the way, how well do you know him?

A. Well, just through the conversations that he used to come down and ask us to join the union, is all.

Q. That is about the general limit of what you know about him?

(Testimony of Irvan D. Anderson.)

A. I just know him well enough to speak to him when I see him, that is all.

Mr. Andersen: That is all.

* * *

Mr. Schwartz: Your Honor, I have another special request to make. We have a truck driver who has just arrived and I would like to get him back to work.

Mr. Margolis: No objection.

The Court: Very well. [1551]

JAMES GASIO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: James Gasio.

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Gasio, what is your business or occupation?

A. Right now I am driving a truck for the Fortier Transportation Company.

Q. You are driving a truck? A. Yes, sir.

Q. For whom?

A. Fortier Transportation Company.

* * *

Q. How long have you been with them? [1552]

(Testimony of James Gasio.)

A. Since the 21st of November 1946.

Q. Whom did you work for prior to that time?

A. Los Angeles-Seattle Motor Express.

Q. Los Angeles-Seattle Motor Express?

A. That is right, sir.

Q. It is hard to hear you. Will you keep your voice up?

A. All right.

Q. Now prior to May 29, 1946, were you with the Los Angeles-Seattle Motor Express Company as a truck driver?

A. I was, sir.

Q. Will you state what your duties were?

A. I was delivering fish to the San Pedro wharf.

Q. Where would you pick up the deliveries?

A. It would come in from Seattle to our dock in Los Angeles.

Q. Where would you deliver the fish?

A. To San Pedro. I took care of all the fish that went down to San Pedro, down the harbor area, Long Beach, San Pedro.

Q. With reference to San Pedro, was it the fish dealers at the Municipal Wharf that you delivered fish to?

A. That is right.

Q. Did you deliver the fish to the dockside or the landward side of the wharf? Did you back up your truck to [1553] that wharf?

A. That is right.

Q. Now on or about May 29, 1946, did anything unusual occur with regard to your duties of deliveries of fish to San Pedro fish dealers?

A. To tell you the truth, I don't remember the exact date. That is, I never paid any particular

(Testimony of James Gasio.)

attention to it. But there was a day down there during that time that I was working for the Los Angeles-Seattle Motor Express that I went down there and they had a picket line up, and I didn't deliver my fish. I went in and seen the man the fish was consigned to and prior to that they told me not to cross the picket line.

The Court: Who told you that?

The Witness: Well, whoever was on picket duty there.

The Court: The pickets?

The Witness: The pickets, that is right.

I didn't know anything about that, and being I was in the union myself I wouldn't cross it. So I called Los Angeles, my dispatcher, and he told me that if I couldn't get rid of the fish there to take it over to the Union Ice in San Pedro and deliver the fish there if I couldn't make some other arrangements.

I talked with Standard Fisheries—that happened to be who the fish was for—and he couldn't accept the fish there at the dock, and he was going to——

Q. (By Mr. Schwartz): He was what?

A. He was going to have a truck follow me.

Q. Did you say he couldn't accept it?

A. He couldn't accept it. They wouldn't let me back the truck up to the dock. In fact, they wouldn't let me in to the wharf, as far as that goes. So I was going to take the truck out on the highway and going to transfer the fish from my truck to his truck

(Testimony of James Gasio.)

and he was going to bring it back in. I was told if that would take place that I would be followed.

Q. You were told by whom?

A. The pickets. If that was to take place, that they would have somebody follow us and destroy the fish, or knock it off the truck or something. What they was going to do, I do not know, but that is what they told me. So I called Los Angeles again and told Mr. Simpson how the things were, and what they had told me, and he told me to bring the fish back into Los Angeles, which I did.

Q. Do you recall who of the pickets it was that did the talking, or did they all talk?

A. Well, there was three fellows that talked to me mostly; one fellow took my name, I do not know his name.

Q. Would you recognize him if you saw him?

A. That I think I might. I wouldn't swear to it.

Q. Will you look around the court room and see if you see him?

A. I believe it is that gentleman right over there (indicating).

Mr. Schwartz: May the record indicate that defendant F. R. Smith was identified?

The Court: Yes.

Q. (By Mr. Schwartz): When you were told that you couldn't transfer your consignment from your truck to the Standard truck, who did the talking?

A. That gentleman there. He is the one that took my [1556] name, also.

(Testimony of James Gasio.)

Q. And you say there were two or three other people with you?

A. Yes. Well, all the pickets were standing around down there, wanted to know what I was going to do, so far as that goes. There were three of them that spoke.

Q. How did you recognize these people as pickets?

A. The way they were questioning me. There wasn't any other way. A few of them had signs, but as I remember these three I don't believe did, to tell you the truth.

Q. Did you see the picket line in progress there?

A. Well, just everybody was standing around down there. It was not exactly what I could say a picket line; I was told not to go up to the wharf, or anything like that.

Q. Where did you park your truck?

A. I was parked—I guess you call it the east end of the wharf, wouldn't you? Doesn't the wharf run east and west? Or north and south, which?

Q. I show you Government's Exhibit 1, and ask you if you can state from that picture where you parked?

A. I would be back this way, before you come into the wharf. You know where the restaurant—

Q. No.

A. Right down by the restaurant.

Mr. Schwartz: May the record show that the witness [1557] indicated, in answer to that question,

(Testimony of James Gasio.)

that the point at which he parked his truck was beyond the left border of the picture.

Q. (By Mr. Schwartz): Did you see any of those placards being carried around by the people whom you refer to as pickets?

A. Yes, sir, there was a few, I didn't pay particular attention to what they said or anything like that.

Q. Did it look to you like there was a strike going on? A. Yes, that's right.

Mr. Schwartz: You may cross-examine.

The Court: Mr. Garrett?

Cross-Examination

By Mr. Garrett:

* * *

Q. Where did you finally deliver this load of fish?

A. As I recall, I believe I delivered it to Freeman, Freeman Certified Foods.

The Court: In Los Angeles?

The Witness: In Los Angeles, that's right, sir.

Q. (By Mr. Garrett): On whose orders?

A. Well, I had the orders from Mr. Simpson. Where he got them, I do not know.

The Court: Simpson was your superior? [1558]

The Witness: That's right.

Q. (By Mr. Garrett): Was he dispatcher in Los Angeles?

A. He was our dispatcher, that's right.

Q. Had he first ordered you to deliver to Union Ice in Wilmington?

(Testimony of James Gasio.)

A. That is where he told me to take it if I couldn't get rid of it here, that is where we always store our fish for the fish dealers; they usually store their fish there, and we sometimes take it there for them, instead of delivering it to their wharf. If they have too much fish there we sometimes take it over to Union Ice for them and deliver it there.

Q. Who told you to deliver the load to Union Ice?

A. Mr. Simpson, he told me if I couldn't deliver it at the wharf to take it to Union Ice.

Q. But you didn't take it to Union Ice?

A. No.

Q. Why not?

A. Because I was told that they wouldn't accept it over there.

Q. Who by? A. (No response.)

Q. Did you go to Union Ice and did someone there—— A. No, I didn't.

Q. Tell us how you knew they wouldn't accept it there?

A. Well, the idea was that I didn't want to take the [1559] fish out of the wharf down there.

Q. I don't care about the idea. Just tell us who told you.

Mr. Schwartz: I submit that he is trying to answer the question.

The Court: Yes, I think he was.

The Witness: I was told the truck and the fish would be destroyed if I was to leave there.

Q. (By Mr. Garrett): All right. You answered that two or three times.

(Testimony of James Gasio.)

The Court: You are asking him on cross-examination. Let him answer the question.

Mr. Garrett: I am asking him who told him to take the fish to the Union Ice Company, and he is going through the same dissertation again. That isn't an answer to my question.

The Witness: Mr. Simpson.

The Court: He just answered Mr. Simpson told him to take it to the Union Ice Company. Now you want him to tell you who told him not to take it?

The Witness: I came to that conclusion myself. I was told the fish would be destroyed if I left there and I would be followed.

Q. (By Mr. Garrett): You say you were told by Mr. Simpson to take the fish to the Union Ice Company? A. That's right. [1560]

Q. Is that right? A. Yes.

Q. All right. You were told by Mr. Simpson to take the fish to the Union Ice Company; that was over the phone, wasn't it? A. Yes, sir.

Q. And that was soon after you had reached the fish wharf with these fish, was it?

A. That's right.

Q. And that was on a telephone call that you had made to Mr. Simpson in Los Angeles, is that right? A. That's right.

Q. And you made that telephone call to Mr. Simpson after talking with some persons you took to be pickets at the wharf, is that right?

A. That's right.

Q. Where did you call from?

(Testimony of James Gasio.)

A. I believe I called from Standard Fisheries.

Q. Is that one of the dealers on the dock?

A. It is.

Q. Do you know who the proprietor at that place is?

A. At the time I believe all I knew him by was Old John. I believe he sold out since then.

Q. Was Old John there at the time you made the phone call to Mr. Simpson? [1561]

A. He was. He was the man I was talking to.

Q. I beg your pardon?

A. He was the man I was talking to there.

Q. There in the office of the Standard Fisheries?

A. That's right.

Q. As a result of the conversation you had with him you made a phone call to Mr. Simpson in Los Angeles?

A. Yes.

Q. And Mr. Simpson was your dispatcher?

A. Yes.

Q. You initiated that phone call, that is, you called him, he didn't call you—is that right?

A. I called him.

Q. Was the fish you had on your truck for the Standard Fisheries, Old John's firm?

A. Yes.

Q. All of it?

A. Yes, all of it; fifteen boxes.

Q. All right. Have you signed any statement or writing for anybody about the testimony you would give about what happened on that day down at San Pedro that you talked about now?

(Testimony of James Gasio.)

A. Have I signed any paper to any statement that I might make on the stand, is that what you mean?

Q. No. About what happened there. [1562]

A. No, sir, I haven't signed any papers whatsoever.

Q. Have you given any statements that were reduced to writing about that?

A. I have not.

Q. Have you talked to anybody about that before you came here?

A. About the case?

Q. About what happened.

A. I told him exactly what happened (indicating).

Q. Who did you talk to first?

Mr. Schwartz: Wait a minute. Let the record show that the witness pointed to me at the moment.

The Court: Do you mean Mr. Schwartz?

The Witness: Yes.

Q. (By Mr. Garrett): Was it Mr. Schwartz you first talked to about your testimony about that day, or did you talk to someone else first?

A. He is the only man I talked to about the case, if that is what you are referring to.

Q. Did he take down what you said in writing?

A. No, he did not.

Q. Did he have anybody else take it down in writing?

A. There was nobody else in his office at the time but us two.

Q. How long ago was that? [1563]

(Testimony of James Gasio.)

A. One day last week, I believe it was either Thursday or Friday.

Q. One day last week either Thursday or Friday, that would be—are you sure it was either Thursday or Friday, are you?

A. I wouldn't swear to it now.

Q. What? Maybe Mr. Schwartz knows.

Mr. Schwartz: I believe it was either Wednesday, Thursday or Friday.

Q. (By Mr. Garrett): It was in the last few days of March, then, wasn't it? Did he get in touch with you or did you get in touch with him?

A. They got in touch with me, sir.

Q. Through whom?

A. They called me at the house and asked me to come down.

Q. Did you get a call? A. I did.

Q. Who from?

A. One of the girls up in the office, as far as I know. It was a girl who called. I don't know her I couldn't even tell you for sure who it was that called. They called from the Federal Building, I know that.

Q. I beg your pardon?

A. They called from the Federal Building here.

Q. And you got the call at home some day last week and came up here, is that right?

A. That's right.

Q. All right. Then you talked to Mr. Schwartz about the testimony you were to give here today, is that right?

(Testimony of James Gasio.)

A. He didn't tell me anything to say, if that is what you are referring to. He just asked me about the case.

Q. What did you talk about—the weather?

A. I beg your pardon?

Q. What did you talk about?

A. I told him exactly what I just said here in court.

Q. What, if anything else, did you talk about besides what you said here in court?

A. That's all.

Q. You don't recall saying anything to Mr. Schwartz that you haven't testified to here, is that right?

A. No, not pertaining to the case, if that is what you mean.

Q. What pertains to the case, that is for us to decide. What else did you talk to Mr. Schwartz about besides what you have testified here?

A. He asked me if it would be convenient for me to come down here, at what time, because the job I have I am on 24-hour call, and he was trying to arrange for me being down here at a time when he could get me right on the stand and get me out of here, that is all.

Q. Did you discuss any compensation for your attendance here? A. No.

Q. Did you discuss anything else there in that conversation that you haven't now already told us about? A. Not that I recall, no.

Q. All right. Now, let's go into the previous dis-

(Testimony of James Gasio.)

cussion. Who, if anyone, did you previously discuss your testimony here with? I am not talking about Mr. Schwartz; I am talking about before last week.

A. Do you mean just in a conversation who I talked it over with?

Q. That's right.

A. Mr. Simpson and Mr. Gano and I discussed it.

The Court: You mean you discussed the fact that you would testify or discussed what occurred.

The Witness: What had occurred down there, what happened. They wanted to know just exactly what took place down there. Why they wanted to know I don't know, but as far as them telling me what to say, or anything like that, there was nothing like that. [1566]

Q. Well, nobody is saying they told you what to say. Don't get nervous about it.

A. I am not getting nervous, but I think that is what you are driving at.

Q. Just tell us what was said. By the way, what happened——

Mr. Schwartz: Just a minute. I will object to that question.

The Court: Objection sustained.

Mr. Garrett: All right.

Q. It was Mr. Simpson and Mr. Gano. You are not working for Mr. Simpson any more, are you?

A. No, sir.

Q. You are working for the Fortier Transportation Company now, aren't you?

(Testimony of James Gasio.)

A. That is right.

Q. And Mr. Simpson is still dispatcher for the Los Angeles-Seattle Motor Express, I imagine, isn't he?

A. That is right. [1567]

* * *

Q. Who is Mr. Gano?

A. He is the Los Angeles-Seattle Motor Express agent here in Los Angeles. He is over Mr. Simpson. Manager of Los Angeles.

Q. Do you know Mr. Gano's first name?

A. I believe it is Robert.

Q. When did you have this conversation with them that relates to the same matter that you testified about here?

A. The day that I came down here, that I was called down here by Mr. Schwartz, out there in the hall.

Q. That was last week?

A. That is right.

Q. You weren't working for them at the time?

Mr. Schwartz: I object to that, if the Court please.

The Court: It has been asked and answered.

Q. (By Mr. Garrett): Where did that conversation take place?

Mr. Schwartz: He just stated that too.

The Court: He has answered that. He said out in the hallway.

Q. (By Mr. Garrett): It took place out in the hallway?

A. That is right.

(Testimony of James Gasio.)

Mr. Garrett: I hadn't heard that, your Honor.

The Court: He just got through saying it.

Mr. Garrett: All right.

Q. And you were under a subpoena, were you, to appear here at that time? A. I was not.

Q. You never were subpoenaed?

A. I was today.

Q. You were handed a subpoena after you were already here, is that right?

A. No. The subpoena was delivered to me last night.

Q. But you had talked with Mr. Schwartz before you were subpoenaed, is that right?

Mr. Schwartz: If the Court please, he has already stated all of this.

The Court: Objection sustained.

Mr. Garrett: All right. [1569]

Q. Now had you talked with Mr. Simpson or Mr. Gano about the matters you have related in your conversation or any of them prior to the day last week that you talked with them in the hallway here?

A. Yes, when I came back from the harbor they asked me what took place down there.

Q. That was the same day this occurrence that you have testified to took place?

A. That is right.

Q. Did you make any report at that time?

A. Not on paper, just verbal.

Q. Did anyone take it down. A. No.

Q. Were Mr. Simpson and Mr. Gano together at the time you made your report to them, or did you make your report to them at separate times?

(Testimony of James Gasio.)

A. You mean when I came back from the harbor?

Q. That is right.

A. Yes, they were together, all three of us.

Q. That was in the Los Angeles office of the Los Angeles-Seattle Motor Express?

A. Right in their office; that is right.

Q. Did you have your delivery record for the fish company with you at the time? A. I did.

Q. And that showed a delivery where?

A. It was originally slated for San Pedro, Standard Fisheries, San Pedro. I brought it back with me and we changed it to Freeman Certified Foods, and I delivered it on the same bill of lading to the Freeman Certified Foods.

Q. Had you already delivered it at the time you made this report to Mr. Gano and Mr. Simpson?

A. I had not.

Q. Was the delivery order changed at or after that conversation you had in their office?

A. After.

Q. After? A. Yes.

Q. Now your first instructions upon your conversation when you were with "Old John" for Mr. Simpson were to deliver your load, I think you said 15 boxes, to the Union Ice at Wilmington, is that correct? A. That is right.

Q. Did you make any effort to see whether the Union Ice would receive the 15 boxes?

A. Well, the way that took place down there, I called Bill; he told me if John couldn't take the fish

(Testimony of James Gasio.)

there to deliver it to Union Ice & Cold Storage.

Q. That was Simpson, was it?

A. That is right. And I hung up the phone and told [1571] John what Bill said. And he said that that wasn't a very good idea because he needed the fish and he wanted to get it.

So he told me to take the fish out from the wharf and he would have his truck follow me.

So I went back to the truck, got in the truck, and that is when this gentleman there came up to me, asked my name, I gave it to him, and he told me if I was to leave there and anybody was following me, or in any such way, anyway they were going to have a couple, three fellows follow me in a car to see that I didn't stop any place and try to get rid of that fish elsewhere than Los Angeles.

Q. Elsewhere than Los Angeles?

A. That is right.

* * *

Q. So that is why you didn't make any effort to deliver to Union Ice?

A. Yes, and I would like to finish a little bit there too.

Q. You have some more you want to put in here?

A. Yes.

After John and I talked this over, I went back to take out the truck, and I came back and told John what the pickets had said and I phoned Bill again.

Q. That is Simpson?

A. That is right. And I told him what the pickets had told me and he said for me to bring the fish

(Testimony of James Gasio.)

back to Los Angeles and he would make other arrangements by the time I got back to Los Angeles for me to deliver the fish some place else.

* * *

Q. Now I think you stated that at the time you came there to the fish dock you belonged to a union yourself, is that right? A. That is right.

Q. Was that the same union that was picketing there or some other union, if you know?

A. I do not know what the fishermen's local is. I belonged to Local 208 at the time.

The Court: 208 what?

The Witness: That is Teamsters; Truck Drivers and Produce Handlers, I believe it is.

* * *

Q. (By Mr. Garrett): After the report that you made to Mr. Simpson and Mr. Gano, did you make any other report concerning the same subject matter at any time after that and between that time and the time that you had your conversation with Mr. Schwartz which you have related here from the stand? A. I did not.

Q. Now did you tell anyone that you proposed to go out on the highway and deliver this fish into "Long John's" or "Old John's" truck?

A. Not that I recall; no.

Q. You can't recall having a conversation about that with anyone, is that correct?

A. About what time? You mean at the harbor?

Q. At the harbor.

A. At the harbor, no.

(Testimony of James Gasio.)

Q. Did you get any instructions from your office—— A. Just a moment.

Q. ——to deliver the fish into “Long John’s” truck at [1575] any place on the highway?

A. No, not from the office. That was strictly between John and I.

The Court: Just a minute. The witness a moment ago said wait a minute.

The Witness: That is right.

John and I did discuss that down there, being you asked me the question, he and I did that.

Q. (By Mr. Garrett): But you didn’t discuss that proposition with anyone except “Old John,” is that right? A. That is right.

Q. Did you agree with “Old John” to go out on the highway and deliver the fish into his truck on the highway?

A. I told him I would if we didn’t get into any trouble.

Q. And what did he say about that?

A. Well, it was his idea. I guess he must have had thought it was pretty good.

Q. Did he ever send his truck out any place on the highway?

A. He has occasionally; yes.

Q. That morning he had?

A. Not that morning, but at other times when we were going to San Diego with a load of fish, and we would have four or five boxes for him, we would call him from Los Angeles [1576] and he would have his truck meet us over on the highway some place

(Testimony of James Gasio.)

on 101 highway, and we would transfer his fish right there and we would go on to San Diego, just to save us an hour or an hour and a half.

Q. That had happened on occasions previous to this morning that you are testifying about?

A. Yes, it has happened before.

Q. That was common practice, was it?

A. Pardon me?

Q. That was a common practice, wasn't it?

A. Yes, if it would help us any in saving us time and get him his fish any quicker. We did it quite frequently whenever we could save any time.

Q. So instead of delivering the fish as the delivery order showed to the place there at the fish wharf where "Old John" had his place, the Standard Fish Company, the delivery instead would be made to his truck at some point on the highway?

A. That is right. And furthermore the bills of lading did not state any address. It said Standard Fisheries, San Pedro.

Q. And that was done at various times, was it?

A. It has been done before.

Q. In the year 1945 and the year 1946?

A. Yes. [1577]

Q. At the time this happened? A. Yes.

Q. And was it done after the time this happened on occasions? It was general practice, was it?

A. Well, not that I recall particularly with Standard, no, but it has been done with other fish companies.

(Testimony of James Gasio.)

Cross-Examination

By Mr. Margolis:

Q. Mr. Gasio, did you continue to work for the same company during the month of June, 1946?

A. I did.

Q. Did you have any occasion during June, 1946, to deliver any fish consigned to any of the fish dealers at San Pedro?

A. During what month?

Q. June, 1946? A. Yes.

Q. Where did you deliver?

A. Well, as I told you before, I delivered all the fish that went down to the harbor.

Q. Well, during the month of June 1946 did you deliver fish to the fish dealers at the harbor at San Pedro?

A. We didn't deliver any fish—I don't recall if they were still picketing in June or not.

Q. During that time?

A. During the picket we didn't deliver fish down there, if that is what you mean.

Q. Did you deliver any fish consigned to any of those dealers?

A. During the time of the strike?

Q. Yes. [1579] A. No.

Q. You didn't deliver any fish to the Union Ice Company?

A. During that time I don't believe I did; no.

Q. Were there other men in the company who were making deliveries of that kind besides yourself? A. That is right.

(Testimony of James Gasio.)

Q. You know, as a matter of fact, that others made deliveries to the Union Ice Company during that period, don't you?

A. To be truthful, no, I don't. [1580]

Q. You don't know whether they did or not?

A. That's right.

Q. Do you recall definitely that you did not make any deliveries to Union Ice Company during that period?

A. During June?

Q. Yes.

A. I don't recall definitely, because I didn't pay any attention to the days I deliver fish. I just deliver fish. It is an every-day occurrence with me. It is my work.

Q. So, for all you know you might have had quite a number of deliveries to Union Ice Company in June, 1946?

A. It could be, that's right.

Q. You don't remember having any trouble in making deliveries to Union Ice Company during June, 1946, do you?

A. Not that I recall. I didn't have any trouble down there at all.

Q. Before you come into the court room did anybody tell you where the defendants in this case were sitting?

A. You mean pointed them out by name and tell me where they were sitting?

Q. No. Did anybody tell you where the defendants were sitting, generally where they were sitting?

(Testimony of James Gasio.)

A. I never even knew they were in the court room, to be truthful with you.

Q. Mr. Gasio, was it just an accident that you looked [1581] directly over to where Mr. Smith was sitting?

A. No; I recognized him. I didn't look at him. I looked over there, and just as soon as I saw him I knew it was him.

Q. What caused you to look over there first of all?

A. I didn't look over there first. I think I started over in this part of the court room (indicating).

Q. You think you did. A. Yes.

The Court: Yes, the witness did, counsel. I saw him sitting here. As a matter of fact, he hesitated a little while at the counsel table.

Mr. Margolis: I was watching him very carefully at the time for that point, your Honor, and my recollection is, and my observation was that he looked over there first.

The Court: He looked around this way (indicating), and he hesitated a little bit, and then he saw Mr. Smith.

Mr. Margolis: How long after June, 1946, did you continue delivering fish to the fish dealers at San Pedro?

* * *

A. Up until the time I quit. I quit there and went to work for Fortier. I was off and on delivering fish or whatever came in.

Q. When was that that you quit? [1582]

(Testimony of James Gasio.)

A. November 21.

Q. Of 1946? A. That's right.

Q. Did you deliver fish to this fellow John? What is his last name, by the way?

A. I don't know.

Q. Did you deliver fish to him after June, 1946?

A. I believe I did, right in there sometime, soon after the strike, he sold his business to another fellow, the other fellow's first name is Frank, what his last name is I don't know either.

Q. You don't remember how long afterwards?

A. No, I don't recall exactly the day, no.

Q. Was it a month or two?

A. That I was delivering fish down there, you mean?

Q. That you were delivering fish to John.

A. Well, lots of times I go down to the harbor and don't even have any fish for him, as far as that goes. Just how many times I delivered to him after the strike I can't recall that. I probably delivered fish to him, yes, after the strike. I know I delivered it to Standard Fisheries, but John had sold out. It still carried the same name. I know that I delivered fish to Standard Fisheries after the strike, I know that. [1583]

* * *

Q. Do you know whether you made deliveries to the Union Ice Company for the Standard Fisheries after June, 1946?

A. I believe I can say that I didn't for Standard, not for Standard Fisheries, I don't believe I did

(Testimony of James Gasio.)

bring any fish to Union Ice for Standard Fisheries after that date.

Q. What is it that makes you—withdraw that. Why is it that you recall any particular things that makes you recall that you didn't deliver fish to the Union Ice Company for Standard Fisheries?

A. No, there is nothing particularly. I just don't believe I did. I know I was at Union Ice after that day, but to say it was for Standard, I wouldn't say I was there for Standard or——

Q. You wouldn't say whether you were there for Standard or not. A. That's right.

* * *

Q. (By Mr. Margolis): Let me see if I get you correctly. What is your testimony—is it that you did not deliver fish to Union Ice Company for Standard Fisheries, or that you do not remember whether you did after June, 1946.

Mr. Schwartz: I object on the ground it has been asked and answered, and it is immaterial.

Mr. Margolis: It has been asked and answered two different ways, your Honor.

The Court: Objection sustained.

Mr. Margolis: I wonder if we could have the last few questions and answers read back, your Honor?

The Court: You were talking laterally here about subsequent to June, 1946. At least I understood your questions that way. Did you? Whether or not you delivered fish to the Union Ice Company after June, 1946?

(Testimony of James Gasio.)

The Witness: I did.

The Court: That is what he is talking about.

Mr. Margolis: He has been talking about that for a number of questions.

The Court: That is what I understood your questions to relate to the witness.

Mr. Margolis: That's right. [1585]

The Court: And the previous questions were whether or not he delivered it during June.

Mr. Margolis: No.

The Court: You can have recourse to the record later. Let's get on with the examination of this witness.

Mr. Margolis: I can't have recourse after the witness has left the stand, when we have two inconsistent answers, according to my recollection.

The Court: The jury will have to draw the conclusion whether you have two inconsistent answers or not. We will proceed with the examination of this witness.

Mr. Margolis: I can't ask any further questions then. I wanted to follow this out, your Honor, and I would like to refer to the record, which I think will support me on that.

Mr. Schwartz: Your Honor, I base my objection to the question, further, on the ground it is immaterial.

The Court: It is immaterial.

Mr. Schwartz: And outside of the scope of the direct examination.

The Court: It is completely immaterial. The objection is sustained on that ground.

(Testimony of James Gasio.)

Mr. Margolis: I think making the objection for immateriality at this time, when, as I say, there are inconsistent answers in the record, is a bad time to make the objection. [1586]

Mr. Schwartz: I made the objection when the question was asked.

The Court: The jury will disregard counsel's remarks.

If you have any more questions of this witness, proceed.

Mr. Margolis: I have no further questions, your Honor.

Mr. Schwartz: I have just one further question.

Redirect Examination

By Mr. Schwartz: [1587]

* * *

GEORGE F. NAYLOR

recalled as a witness by and on behalf of the government, having been previously sworn, testified further as follows:

* * *

Direct Examination

(Resumed)

By Mr. Schwartz:

Q. I show you what has been marked Government's Exhibit 37, for identification, and ask you whether you received that letter at your place of business.

(Testimony of George F. Naylor.)

A. I did.

Q. Was the date you received it on or about the date appearing on Exhibit 37, for identification?

A. It was.

Mr. Schwartz: We offer in evidence Government's Exhibit No. 37, your Honor.

Mr. Andersen: We don't object to it on the ground of foundation or anything like that, but on the ground it is not a complete document, may it please the court.

Mr. Schwartz: We submit that the reference therein is [1589] not material to the issues in this case, nor to the completeness of that document.

The Court: If you have it——

Mr. Schwartz: I don't have it, your Honor.

The Court: Well, that is different.

Mr. Andersen: Your Honor, the letter shows, right in the lefthand corner of it, that there was another document attached to it.

Mr. Schwartz: I don't deny that. It refers to another situation, the San Pedro situation.

Mr. Andersen: How does he know that if he has never seen it?

Mr. Schwartz: The letter says so.

Mr. Margolis: Does Mr. Rubin say they don't have a copy of it?

Mr. Schwartz: I don't know whether he does or not. Your Honor, I am submitting that letter as it is. I am submitting the document as it is, and I am willing to argue and object to it on that point.

The Court: Let me finish reading it.

(Testimony of George F. Naylor.)

Mr. Andersen: If they were going to read that document, they would have to read the whole document.

Mr. Schwartz: That is the whole document, I submit.

The Court: This letter refers to another letter, and sooner or later the parties are entitled to have it, either [1590] now or in cross-examination, so do you have the letter?

Mr. Schwartz: Before going into that point, I would like to submit that this document as it is is complete. The reference to some other letter or anything else could be, and we say in this case is completely immaterial to the issues in this case, and to this particular witness' testimony, and this document. Supposing it referred to a bill in Congress?

The Court: Supposing it does?

Mr. Schwartz: I would say it has nothing to do with the issues in this cause.

The Court: That is up to me to decide. I can't decide it until I see it.

Mr. Schwartz: I submit the document is complete on its face, your Honor, that is my point.

The Court: No, it isn't.

Mr. Kenny: I submit counsel hasn't answered your Honor's question. You asked him if he had the letter, and he hasn't answered that yes or no.

The Court: Does the government have the letter?

Mr. Schwartz: I ask your Honor to read the first two paragraphs.

(Testimony of George F. Naylor.)

The Court: I read that to see if it was complete, and it isn't. Do you have the letter that that refers to?

Mr. Rubin: May I see the letter so I can determine whether we have, if your Honor please?

The Court: All right.

Mr. Rubin: I can't tell from reading this first paragraph whether we have the letter or not. I will be glad to state to the court that I will examine all the documents that we have upstairs in order to determine that. If counsel, after recess, have any ideas as to what this letter refers to, I will be glad to receive that information. It might expedite my search.

Mr. Kenny: We do. We will be very glad to help you on that, Mr. Rubin.

Mr. Rubin: Thank you.

The Court: All right. Let's proceed. The document will be marked for identification.

Mr. Schwartz: Yes, it has been marked.

The Court: What is that?

Mr. Schwartz: 37.

The Court: That was marked for identification the other day.

Q. (By Mr. Schwartz): Mr. Naylor, I believe last Friday I asked you some questions concerning boats that you obtained fish from for your business, is that correct? A. Yes, you did.

Q. With regard to the boats, five or six——

A. There were six at that time.

Q. Do you have any control over when those boats go [1592] fishing or where?

(Testimony of George F. Naylor.)

A. No; the boats go fishing at their captain's will, wherever he wants to go.

Q. Do those boats or do the captains of those boats have to sell their fish to you?

A. Well, it is understood that they will sell them to me providing they are in that locality. If they are outside of that locality it is not obligatory that they do.

Q. If they are inside the Newport locality do they have to sell it to you? A. Yes.

Q. As to the independent boats from whom you purchase fish, do those people fish under your control? A. No.

Q. Do they have to sell fish to you?

A. No.

Q. Is there any employer-employee relationship whatsoever between you and those independent boats? A. No.

Mr. Margolis: I object on the ground that that calls for the opinion and conclusion of the witness, your Honor, what kind of relationship there is.

The Court: I think it does. The objection is overruled. I think it is a popular and common understanding. If it wasn't I don't know how anyone could conduct a business if they had to go to a lawyer every time to find out if a person was an employee.

Q. (By Mr. Schwartz): What is your answer, Mr. Naylor? A. No.

* * *

Mr. Margolis: One other matter, your Honor.

(Testimony of George F. Naylor.)

With regard to the examination of records by Mr. Fuss, it has all worked out very well except for the American Railway Express. He [1595] presented himself at the office of the American Railway Express and was not allowed to look at the records and was told that he would not be allowed to look at the records in the absence of a written order from this court. I have never run into a situation of this kind before. I know of no written order that this Court could issue except to subpoena the records in.

We of course don't want to put the American Railway Express to the difficulty of bringing those boxes and boxes of record in, but if that is the only way of our getting access to them, I am afraid we will have to do that, and I was wondering whether there might be some shortcut outside of a subpoena duces tecum which could be utilized so that we could see the records at their place, because I know of no form of order which your Honor could make which would authorize Mr. Fuss to look at them.

The Court: The witness was here. I do not know whether he was the one who had immediate charge of those records or not. He was not excused permanently, as I remember.

Mr. Dixon: That is right.

The Court: He was only excused to be recalled for further examination after the records were examined. We can recall the witness and I can order him to make the records available or to produce them.

(Testimony of George F. Naylor.)

Mr. Margolis: One of the two. [1596]

The Court: I have that power, without a subpoena.

Mr. Margolis: Then we will request——

The Court: However, it probably would be better to have a subpoena duces tecum prepared, and then the records that you want to see would be specifically identified. As I remember, they were pretty well identified anyhow as to the particular records.

Mr. Margolis: I think they were identified, and we will prepare it if necessary, but, frankly, we don't want him to bring those records into court.

Mr. Schwartz: Was that brought to our attention?

Mr. Margolis: No.

Mr. Schwartz: When did this happen?

Mr. Margolis: I am not saying the Government had anything to do with it.

Mr. Rubin: We didn't even know about it.

Mr. Margolis: That is right.

Mr. Schwartz: When did it happen?

Mr. Margolis: I believe either Thursday or Friday of last week.

Mr. Rubin: Maybe we can handle it informally.

The Court: Perhaps during the noon recess you can straighten it out, otherwise he will be brought back here.

Mr. Schwartz: I think we can straighten that out, your Honor. [1597]

(Testimony of George F. Naylor.)

(The jury returned to the courtroom at 11:40 o'clock a.m.)

* * *

Q. (By Mr. Schwartz): Mr. Naylor, on or about June 29 did it come to your attention that the picket lines had been removed from the fish dealers at San Pedro? A. Yes, sir, it did.

Q. On or about that time did you receive a visit at your establishment from any of the members of an organization which calls itself Local 36?

A. Yes, sir.

Q. At your place of business? A. Yes, sir.

Q. Who were those people?

A. They were Bob Phelps and Mr. Lackyard, I believe.

Q. Do you see them in court? A. Yes.

Q. Will you point them out?

A. This is Bob Phelps, and Mr. Lackyard is back there. [1599]

Mr. Schwartz: May the record show that the witness identified the two named defendants?

The Court: So ordered.

Q. (By Mr. Schwartz): Now what took place on that occasion?

A. Well, they presented me with that letter that you have there.

Q. Referring to Exhibit 37 for identification?

A. That is right.

Q. Was there any conversation at the time?

A. Yes, there was. They explained to me that the dealers in San Pedro had been presented with

(Testimony of George F. Naylor.)

an agreement, I believe it was, or the dealers had written a letter to the union stipulating certain things that they—I believe that the union would have a representative on the wharf at San Pedro, that he would establish prices, and that the markets would agree by those prices and pay for them. He said they had all signed those and asked me if I would do likewise, at which time I told them that I would have to talk to my attorney about it and act on his recommendation, which I did, and he advised me strictly not to sign any agreement of that sort.

The agreement was entirely satisfactory with the exception of agreeing to prices and agreeing to boycott the fishermen that didn't belong to the union. He advised me that such was the case, that that is what it would amount to. [1600]

Q. Did you have another conversation with Phelps or any of the other people you have named after that first meeting at your place that you just talked about? A. After that meeting, no.

Q. Did you advise Mr. Phelps or any of the people with whom he is associated that you would or would not enter into this agreement?

A. Yes, I did.

Q. How did you advise them to that effect?

A. Wait a minute. I am wrong on that when I said I did not have another meeting with them. They came back to see me and I advised them at that time. Mr. Phelps called——

Q. When was that?

(Testimony of George F. Naylor.)

A. I believe the same afternoon.

Q. What took place on that afternoon?

A. That was all there was to it. They said they were sorry they would have to continue with the picket line.

Q. What did you tell them?

A. I told them that I couldn't give them a letter to the effect that I would agree not to buy any fish from any one union fisherman and that I couldn't agree to any fixing of prices or any stipulated prices.

Q. Now prior to your meetings, these two meetings, had you had any telephone conversations with any members of this organization which calls itself Local 36? [1601]

A. Yes, on the morning that I heard the picket line had been removed at San Pedro I called Mr. Zafran on the phone.

Q. Do you know Mr. Zafran?

A. Yes, I do.

Q. Do you see him in court?

A. Yes, I do. He is back there in the first row, next to Art Hill.

Mr. Schwartz: May the record show that the witness identified the defendant Zafran, your Honor?

The Court: So ordered.

Q. (By Mr. Schwartz): What was this conversation that you had with Mr. Zafran?

A. I called Mr. Zafran and told him, I understood the picket line had been removed from the

(Testimony of George F. Naylor.)

markets in San Pedro, and asked him when they were going to remove the picket line at Newport Beach. He told me that that was entirely up to the boys in Newport Beach that were in charge of the local union down there, and that it was up to their discretion whether the picket line would be removed or not.

And I said, "Well, I understand from what Bob Phelps and the other boys have told me, that the San Pedro dealers had signed an agreement, or given them a letter to the effect that they would abide by the terms of this agreement, but that I had [1602] checked with the dealers in San Pedro by phone and found out that such wasn't the case, and that I didn't see any reason for them to continue the picket line at my place in Newport Beach when they had already removed the picket lines at San Pedro."

He said, "Well, it is entirely up to the boys in Newport Beach."

And I said, "Why don't they take the picket line off?"

Then he said, "Well, maybe it is because they don't trust you."

And that was, as I remember, the way the conversation ended.

Q. Now you mentioned Mr. Lackyard and Mr. Phelps as having visited you. Were there any other people with them?

A. Well, those are the ones that I particularly

(Testimony of George F. Naylor.)

remember. I believe there was someone else with them but I don't just recall who it was.

Q. Now how soon after this conversation, or these two conversations on the same date at your place of business, was the picket line removed from your establishment?

A. I believe it was the following day or perhaps the day after that. I am not real sure about that. Within a very short time.

Q. Did you sign any agreement with them?

A. No. [1603]

Q. Of any kind? A. No.

Q. And after the pickets were removed from your establishment, did you proceed to conduct your business in the usual course as you had prior to the picket line being placed there?

A. I did.

Mr. Schwartz: You may cross-examine.

The Court: Pardon me. Before we commence the cross-examination, I suppose you will want to know the disposition of this letter which was offered and which I have not yet ruled on, Exhibit 37?

* * *

Mr. Schwartz: I might state to the Court at this time that I am not going to offer Exhibit 37 except as it was offered, without an offer of additional document to which this [1604] Exhibit 37 refers. I am going to stay with my offer on that point, your Honor.

The Court: I do not think it is admissible, coun-

(Testimony of George F. Naylor.)

sel. If you offer part of the document they are entitled to have the whole document. I cannot tell whether the other document is material or immaterial until I see it. [1605]

* * *

Cross-Examination

By Mr. Margolis:

Q. As I understand it, Mr. Naylor, you have a wholesale fish business located in Newport Beach, is that right? A. That's right.

Q. Whereabouts in Newport Beach is that place located?

A. It is located at 2800 Lafayette, Newport Beach.

Q. Is that on the water front?

A. That is on the water front.

Q. Are there any other fish dealers' places adjoining yours or in the immediate vicinity? [1607]

A. Yes, there are.

Q. And what other places are there?

A. There is John Harmon's place that is located about two blocks from where I am.

Q. Is that the name? When you say "John Harmon's place," is that the name of the place?

A. John Harmon's fish company, I believe it is. I believe all he has over his door is just "John Harmon."

Q. He is also a wholesale fish dealer?

A. Yes; and one block north on Lafayette from me is located a building that at one time was occu-

(Testimony of George F. Naylor.)

pied by Larry Fisher. He was a wholesale fish dealer.

Q. Was he the man that represented Paladini?

A. He was the man—I don't know whether he represented Paladini or not. Ostensibly he was in business for himself.

Q. Paladini is a wholesale fish dealer in Los Angeles, is it not? A. That's right.

Q. Is that place still there? Is Larry Fisher there?

A. The building is still there, but Larry Fisher is gone.

Q. Is there somebody else doing business there?

A. There is nobody at the present time doing business there. Across the street from them is the Western Cannery [1508] that buy fish wholesale.

Q. For cannery purposes?

A. For fresh fish purposes.

Q. For fresh fish purposes? A. Yes.

The Court: And cannery?

The Witness: They have a cannery, but the cannery is at a separate location. And in the same building that is occupied by the Western Cannery is the Commercial Fishermen's Cooperative Association.

Q. (By Mr. Margolis): Going back to Western Cannery for a moment, at the location you have described, Western Cannery is engaged solely in the fresh fish wholesale business, is that right?

A. No; they are engaged both in canning and in the——

(Testimony of George F. Naylor.)

The Court: At that location?

The Witness: Not at that location, no. Only in the fresh fish business.

The Court: That is his question.

The Witness: Only in the fresh fish business at that location. And they also operate an oil dock at that place.

Q. (By Mr. Margolis): They are very versatile, aren't they? A. I would say so.

Q. Then there is the Fishermen's Cooperative right [1609] in the same building as Western Cannery, is that right?

A. That's right. I believe they rent from the Western Cannery.

Q. And they also buy fresh fish, is that right?

A. That's right.

Q. Any others?

A. I believe that that is all of the wholesale fresh fish dealers in Newport Beach.

Q. In addition to the establishment which you have in Newport Beach, do you have a branch in Los Angeles?

A. I had a branch in Los Angeles. I have disposed of it. I no longer have it.

Q. When did you dispose of it?

A. October.

Q. 1946, is that right? A. That's right.

Q. How long did you have it prior to October, 1946?

A. Well, I had it since the fall of 1937.

(Testimony of George F. Naylor.)

Q. And where was that branch located during that period?

A. At 1240 East Sixth Street, Los Angeles.

Q. And that was also engaged in the wholesale fish business? A. That's right.

Q. Did that establishment buy fish independently—I will withdraw that. Did you purchase fish at that establishment, as well as at the establishment at Newport Beach? [1610] A. Yes.

Q. From what sources did you purchase fish at the Los Angeles establishment?

A. Los Angeles establishment——

Mr. Schwartz: I object to the question on the ground it is not material to the issues in this case, and outside of the scope of the direct examination.

The Court: I fail to see the materiality of it. If it is preliminary—I can't even see how it would become material.

Mr. Margolis: I submit, if your Honor please, it is part of the same business, it is a branch of the same business, and I think it is material, having gone into part of the business we have the right to go into that part which was not covered.

The Court: If it is material with the other business, you can go into it.

Mr. Margolis: Yes. I think what fish was received by it during——

The Court: I will overrule the objection at this time. If the materiality isn't made to appear, why——

Mr. Margolis: It will be subject to a motion to strike?

(Testimony of George F. Naylor.)

The Court: Yes, submit to a motion to strike.

Mr. Margolis: Do you want the question read?

The Witness: I believe you better. [1611]

* * *

The Witness: The Los Angeles establishment purchased fish from Seattle—from Washington, Oregon and Northern California points; also from the East Coast, the matter of our oysters; and shrimp out of Lower California; the usual sources of supply for a fish market.

Q. (By Mr. Margolis): Did you obtain any fish from the Southern California area?

A. Perhaps there was a small amount of local fish bought in Southern California outside of the fish that we sent them from Newport Beach.

Q. Some of the fish that you purchased at Newport Beach would be sent to your branch in Los Angeles? A. That is correct.

Q. In addition they might buy a small amount directly, is that right? A. Yes.

Q. Where would you buy that? From the fishermen in San Pedro?

A. No; they would buy that fish from dealers in San Pedro or San Diego, or Newport Beach, or wherever they would happen to have a supply.

Q. In addition to operating as a wholesaler, and during the period mentioned as a wholesaler, in Newport Beach, and during the period mentioned having a branch in Los Angeles, did you also act as broker for fishermen selling shark livers?

A. That is correct.

(Testimony of George F. Naylor.)

Q. How long have you been doing that?

A. Ever since—let's see. I will be more specific than that. For the past three years.

The Court: They sell all kinds of livers, don't they?

The Witness: That's right, fish livers.

Q. (By Mr. Margolis): In addition to shark.

The Court: It isn't just shark livers?

The Witness: No.

Q. (By Mr. Margolis): The main item is shark livers? A. That is true.

The Court: That is because the livers are the biggest?

The Witness: And the most valuable.

Q. (By Mr. Margolis): They have a lot of vitamins?

The Witness: That is true.

Q. Do you also operate a retail business?

A. At that time we didn't, no.

Q. At that time you didn't? A. No, sir.

Q. And now you do, is that right? [1613]

A. Yes.

Mr. Schwartz: At what time?

The Witness: At the time of the trouble with the union, at the time we had our picket lines. I presume that is what you are referring to.

The Court: When did you begin your retail business?

The Witness: In the fall of '46.

Q. (By Mr. Margolis): Is that the first time you had owned a retail business? A. Yes.

(Testimony of George F. Naylor.)

Q. Where is that located?

A. Same location at Newport Beach.

Q. In addition to that, do you operate and maintain facilities for repairing and fixing nets?

A. Yes, our own nets.

Q. I beg your pardon?

A. Our own nets.

Q. You don't repair and fix anyone else's nets?

A. No.

Q. How long have you maintained those facilities?

A. For approximately four years.

Q. The fishermen who work on the boats owned by you use these facilities for the purpose of repairing nets, is that right?

A. That is correct. [1614]

Q. Where are they located?

A. They are located right across the street from our principal place of business at Newport Beach.

Q. From the wholesale place?

A. That's right.

Q. You own a number of boats, do you not?

A. Yes.

* * *

Q. (By Mr. Margolis): Will you tell us what boats you owned during the year 1946, stating with regard to each boat its approximate size.

A. I own the Cabrillo. She is a 32-foot boat.

The Court: And the crew?

The Witness: Last year I believe she only had one in the crew.

The Court: That is the fellow who ran it and one man? [1615]

(Testimony of George F. Naylor.)

The Witness: No; just the man who ran it.

Q. (By Mr. Margolis): Sometimes more than one?

A. Sometimes there are more than one, yes.

Q. What is the maximum?

A. Two. Then there is the Prosperity. She is a small boat. I think it is about 24 feet long. And there is only one man on that boat.

Q. At all times? A. At all times.

Q. All right.

A. Then there is the Tropic Bird, and she has operated with as few as one man in the crew, the skipper, the fellow that operates the boat, and with as many as five.

Q. How big a boat is that?

A. It is 38 feet. I have the Standard. She is a 48-foot boat that has a crew varying from two men to seven men. Then I have the Skylark, which is a 51-foot boat, and she operates with a crew from five to seven men. Then at that time I owned the Pioneer—rather, owned an interest in the Pioneer. She was a 51-foot boat and operated with a crew of never less than four and as many as eight men. I think that is six, isn't it? [1616]

* * *

Q. (By Mr. Margolis): These facilities that you maintain the purpose of repairing and fixing nets, there are certain persons who perform labor there, who do work there, isn't that so?

A. Yes.

Q. And that work consists of repairing and fixing nets, is that right? A. That's right.

(Testimony of George F. Naylor.)

Q. Does it also consist of making new nets?

A. Sometimes.

Q. All right. Now, there are certain persons who perform that work with your facilities from time to time, is that right? A. Yes.

Q. Is that work carried on continuously?

A. It was at that time, yes.

Q. It was at that time?

A. At the time, yes.

Q. Are these people who do work for you the same people who fish on the boats or from the boats which you own?

A. No; at that time we had a net man that did nothing but make nets and repair nets and keep them in condition.

Q. Was he a fisherman? [1623]

A. He had been a fisherman, but he was on our pay roll, he was our employee.

Q. Working on a daily basis, a salary basis?

A. Working on a salary basis.

Q. I see. At other times the facilities are used, are they not, by the men who fish from your boats, isn't that right?

A. And from all the other boats that fish around there, too.

Q. They come in and use those facilities?

A. Yes, we extend that courtesy to them. We allow them the privilege of using the racks that the nets are put on.

Q. When the fishermen working on your boats repair nets, are they paid by you?

(Testimony of George F. Naylor.)

A. No; that is part of their job. Their job is to fish and to keep the gear in a state of repair. Any new gear that we put out, we make the gear and we pay for the net man to make that gear.

Q. When you referred a moment ago in one of your answers to "at the time"—

A. I mean at the time you are referring to; the time of this trouble we had.

Q. In May and June, in that period, in 1946?

A. Yes.

Q. You had somebody on your pay roll at that time making [1624] nets? A. That's right.

* * *

Q. (By Mr. Margolis): At the conclusion of this morning's session I believe you had just testified that you could not estimate the amount either in dollars or pounds of fish which you obtained from your own boats during the year 1946, is that right?

A. That's true.

Q. Is it possible for you to estimate the total amount of fish which you obtained from all fishermen at Newport Beach during that year?

A. Well, I know how much fish we buy, and I know how many boats we have working for us, and which boats are independents and which boats are our own, so I have estimated from that. [1626]

Q. During the year 1946, approximately how much fish did you buy all together from fishermen at Newport Beach, including your own boats and all other boats? A. In 1946?

Q. Yes.

* * *

(Testimony of George F. Naylor.)

A. I would be unable to give you the amount in pounds, but I can say that approximately we handled—well, let's see, I better tell you our sales were approximately \$175,000 in 1946 and our purchases were approximately 80 per cent of that amount.

Q. (By Mr. Margolis): Did your purchases include purchases from sources other than fishermen at Newport Beach?

A. I mean from the fishermen at Newport Beach. And our sales are for fish produced there.

Q. Would you say, then, you purchased approximately \$140,000 worth of fish?

A. I said we purchased approximately 80 per cent of \$175,000. If that is \$140,000, yes, that is it.

Q. Approximately \$140,000. Approximately 40 per cent of that was obtained from the boats which you owned, is that correct?

A. That's right. [1627]

Q. About sixty-five or seventy thousand dollars worth, about sixty-five thousand dollars worth was obtained from these six boats which you owned at that time?

A. Approximately.

Q. Are all of these boats used—and by “these boats” I am referring to the boats which you owned—used by the fishermen under the same terms and conditions, or do the terms and conditions for each boat's use vary?

A. The terms and conditions are virtually the same. On small boats we take, where there is only one man operating the boat, we take a third on a small boat; where there is more than one man on

(Testimony of George F. Naylor.)

a boat, the boat takes a share, the captain of the boat gets either a share and a half or a share and ten per cent of the boat share; and the gear, the nets, only nets aboard, get a share. [1628]

Q. And each individual fisherman gets a share?

A. And each individual fisherman gets a share.

Q. Is there any written agreement signed in connection with the utilization of the boat by the fishermen?

A. No, we have only an oral agreement.

Q. Does that oral agreement run for any specific period?

A. As long as they are on the boat.

Q. You let the fishermen have one of your boats, and they keep it indefinitely as long as they want to?

A. Yes.

Q. In other words, you have no right or power to say to them, "I want my boat back?"

A. Oh, yes, if I wanted the boat back, in case I sold it or wanted to do anything else with it, I could do that. I could tell them I want the boat back.

Q. Actually at any given time you can tell these fishermen, "You are through, as far as the use of my boat is concerned," isn't that right?

A. That is right.

Q. How about maintenance of a boat, do you maintain the boat or do the fishermen who use the boat maintain the boat?

A. I maintain the boat.

(Testimony of George F. Naylor.)

Q. Do the fishermen do any kind of maintenance work in connection with the boat? [1629]

A. No, sir.

Q. You do all of the maintenance work?

A. That is right.

Q. What does that consist of?

A. That consists of keeping the boat in repair, and painting it, and any overhauling of the engine that is necessary.

Q. I assume that you use the money which you get as your share of the boat for that purpose?

A. That is correct.

Q. Is that money which you receive from the boat adequate or more than adequate to take care of maintenance?

A. Well, it hasn't proven adequate.

Q. As a matter of fact, you operate these boats at a loss, is that right?

A. I wouldn't say that I operate all of my boats at a loss, but I do say that in general they are not profitable.

Q. In general, you operate them at a loss, is that correct?

A. Not necessarily at a loss, but for the investment that you have in them they are not profitable. There is quite a difference.

Q. The reason that you operate those boats is so that if you want a particular species of fish at any given time you will be in a better position to get it than a fish dealer [1630] who doesn't own boats, isn't that right?

(Testimony of George F. Naylor.)

A. That is not the reason that I have them. I have those boats because five years ago the fishermen of Newport Beach organized a swordfishermen's association, and they contracted with a dealer to give him all of the swordfish that was produced from that association, and, by the way, that association extended from Santa Barbara to San Diego, and they created an absolute monopoly on swordfish. We were unable to get any swordfish. Swordfish is a necessary item in my business, so I bought some boats to get some swordfish. The only reason I have any boats is because of that, and I am going to get rid of them as soon as I can because I don't want them any more.

Q. Because you don't make any money on them?

A. Because they are an unnecessary headache to me and I can take the money and put it to a more profitable use some place else.

Q. Did you obtain just swordfish from these boats?

A. Naturally not. They caught all kinds of fish for me, but my object in having them was to get swordfish.

Q. What percentage of the fish which they caught was swordfish?

A. Oh, heavens, that is difficult to say, what percentage of them are swordfish. I don't keep percentages on the varieties of fish that I buy.

Q. You don't know approximately? Was it half or a third?

A. Oh, heavens, no. You see, the swordfish sea-

(Testimony of George F. Naylor.)

son is limited to but a few months of the year and they fish for other varieties of fish for the balance of the year.

Q. They also fish for other varieties of fish during the season of the swordfish too, don't they?

A. They catch albacore and swordfish.

Q. As a matter of fact, swordfish is a very tiny per cent of the total fish that you buy?

A. That is true, they are a small percentage of what we buy.

Q. Maybe 5 per cent or less?

A. I would hesitate to make any estimate of what the percentage is.

* * *

Q. Now in addition to owning boats do you charter and operate boats?

A. No, we don't.

Q. Did you do that in 1946?

A. No. We operated some boats—one boat, for the owner, the boat Reliance. It was owned by a Mr. Sherwood. [1632] He was in Fresno or some place else and he had a boat down here and he came down and made an arrangement with us to operate the boat for him, which we did. We had a power of attorney from him and operated that boat.

Q. When was that?

A. That began in 1945, along in the fall, I think about September of 1945, and continued through June I think of 1946.

(Testimony of George F. Naylor.)

Q. What do you mean when you say that you operated the boat?

A. Well, we were in charge of the boat. We selected a crew and put them on the boat and they fished and sold their fish and we handled the collection of the boat's share and paid the expenses on the boat, and did all of that.

Q. You also operate the boats you own?

A. Yes.

Q. Isn't it a fact that you also chartered a boat from the South Coast Shipyard?

A. No, that is not a fact. I didn't charter a boat from the South Coast. Charlie worked on the boat that he has reference to, but I didn't charter it from them. I had an option to buy the boat.

* * *

Q. Did you buy it? [1633]

A. No, I didn't buy it.

Q. You mean you got possession of the boat?

A. Absolutely.

Q. Under an option?

A. Yes, and power of attorney from the South Coast to operate that boat.

* * *

Q. How long did you have that power of attorney?

A. I had the boat for approximately a year beginning sometime in '45 and ending sometime in '46.

Q. And during all of that period you had it under an option to buy?

A. That is right.

(Testimony of George F. Naylor.)

Q. You operated it just the same as the way you operate your own boats, is that right?

A. That is right.

Q. Now during 1946 you were operating two boats which you did not own, is that right?

A. That is correct.

Q. What percentage of the fish which you bought did you obtain from those two boats which you operated but did not own?

A. Very small percentage.

Q. Can you estimate it? [1634]

A. Well, I will tell you. In the first place, the Reliance fished bait for the sports fishing fleet. That was their principal occupation. The fish that I got from them was negligible. They might have occasionally gotten a little market fish, or I might occasionally buy some sardines or anchovies from them, but it was in a very limited quantity.

Now that boat that I had of the South Coast that I operated, Charlie will tell you from the time he was on there they never made any money, they didn't catch any fish, they couldn't catch any fish.

Q. Was that true for the entire year that you operated it?

A. Yes, that was true for the entire year.

The Court: What do you mean, they couldn't catch any fish?

The Witness: They just didn't know how.

Q. (By Mr. Margolis): You mean the fishermen who were on there didn't?

(Testimony of George F. Naylor.)

A. That is right. The fishermen on the boat couldn't catch fish. The other boats clicked, but they couldn't.

Q. They couldn't catch any at all?

A. They caught quite a few, but so little it was negligible.

Q. Did they sell those fish to you?

A. I think that they sold those fish to us [1635] possibly they might have sold some in Santa Barbara, I don't know.

Q. They might have done some fishing around Santa Barbara?

A. That is right.

Q. But when they fished in Newport Beach and caught fish they sold it to you?

A. That is right.

Q. In addition to that, do you finance boats?

A. Yes, I have done some of that in the past.

Q. During the year 1946 were you financing any boats?

A. Yes; one.

Q. What boat was that?

A. The boat Two Waves.

Q. On whose behalf were you financing it?

A. A fellow named Lloyd Gabriel.

Q. Did he fish around Newport Beach?

A. Yes, he fished Newport Beach and Catalina and San Diego.

Q. What percentage of his time did he fish around Newport Beach?

A. Not very much of his time. He did most of his fishing in Catalina and San Diego, I think.

Q. Did he sell the fish *that caught* to you?

(Testimony of George F. Naylor.)

A. That part that he delivered to Newport Beach he did--no, I will take that back, he didn't even deliver all of [1636] those. Yes, he did, on the Two Waves. He did deliver the fish on the Two Waves that he brought into Newport Beach to me.

Q. The fish caught at Catalina sometimes go to Newport Beach, do they not?

A. Yes, but when he fished out there he delivered to the barges, the French Sardine and Van Camp's barges and other barges for the canneries.

Q. But the market fish he caught out there he brought in to you?

A. That is correct.

Q. Do you also finance gear?

A. In some instances I have.

Q. Were you financing gear in 1946?

A. No.

Q. Not at all? A. Not in 1946; no.

Q. Prior to that time?

A. Prior to that time I had. [1637]

* * *

Q. Do you own nets in addition to those nets which are used on your boats?

A. Yes, I do.

Q. Do you make arrangements for the use of those nets by other fishermen? A. I do.

Q. On a share basis?

A. That is correct.

Q. With how many boats--by the way, I am going to get rid of those too. They are not profitable.

(Testimony of George F. Naylor.)

Q. They are not profitable either, are they?

A. That is right.

Q. This business of owning a boat and owning nets isn't a very profitable business, is it? [1638]

A. That should be a fisherman's business, not a market owner's business. I will tell you that for sure.

Q. Because the fishermen work on the boats?

A. That is why, and they will take care of the boat and their own gear that they pay for.

Q. How many boats were using your nets during the year 1946? A. Two.

Q. What boats are those?

A. The boat Louise and the Boat Reliance.

Q. The Reliance you have already mentioned, isn't that right?

A. Yes, but it was someone's boat and my gear.

Q. Now with regard to the Louise, did the Louise sell its fish to you?

A. Yes, he sells his fish to me.

Q. Do you know what percentage of the fish you purchase comes from the Louise?

A. Heavens, no.

Q. I think you have already testified that you have employed a man who was a fisherman to repair net. I want to ask you whether in addition you employ fishermen to assist in cleaning and packing fish.

A. Oh, yes, heavens yes. We have the fishermen, and we either have to give them something to do or feed them, one [1639] or the other, so we

(Testimony of George F. Naylor.)

hire them to work in the market, and we hire them to work on nets during the off seasons when there are no fish.

Q. They have to do that in order to continue to eat during that off season?

A. Well, they have to do something to eat, and they like to work down at our place.

Q. So as a regular practice you employ fishermen to assist you in cleaning and packing fish and in doing other things?

A. Not as a regular practice, because as a regular practice when we have any fish the fishermen are all fishing and we have to get outside [1640] help.

Q. Well, I mean during the off season.

A. During the off season whenever we have the occasion to hire any outside help we hire the fishermen, give them the preference of the work.

Q. Now, in addition you own two trucks, do you not? A. I own several trucks.

Q. How many? A. Five.

Q. Are those trucks all operated in conjunction— A. No, they are not.

Q. Let me finish my question, please.

A. Pardon me.

Q. Are all those trucks operated in conjunction with the wholesale place at Newport Beach?

A. That is correct.

Q. Was that so in 1946?

A. That's true.

Q. Who drives those trucks?

(Testimony of George F. Naylor.)

A. Well, we have a truck driver, once in a while we have; most of our trucks have been used in the last year or so for the fishermen to move their gear around and to move their furniture, as an accommodation to the fishermen.

Q. Are any of those trucks operated at all for—withdraw that. You say they are used for the purpose of hauling gear for fishermen? [1641]

A. Yes, we lend them to them at no charge at all. They load their gear on it and haul it around to their houses and to their boats and put it on the street and put it on the racks and tan it at no charge.

Q. And you also utilize some of those trucks in connection with your own operations, do you not?

A. Yes, we do.

Q. How many?

A. At the present time we operate one.

Q. How many in 1946?

A. During the period of the strike, one.

Q. How many during the rest of the time in 1946?

A. Well, we utilized—

Mr. Schwartz: Before or after the strike?

Mr. Margolis: Both before and after.

The Witness: I don't think there has been—just a few occasions where we have used all of our trucks over any given period of time. Most of the time our trucks just stand by in case that we have fish to haul.

Q. (By Mr. Margolis): Do you operate one truck most of the time?

A. Most of the time.

(Testimony of George F. Naylor.)

Q. And the situation with regard to the operation of one truck during the period of the strike was not a unique situation was it? [1642]

A. Oh, no. We have other business that we do besides receiving the fish from the fishermen.

Q. So both before, during and after the strike, as a general rule you operated one truck in connection with your business?

A. During that period of the year when there was no mackerel running, or there were no albacore running, no fish that we haul to the canneries in large quantities, we operated one truck, yes.

Q. For what purpose is that truck operated?

A. To deliver orders.

Q. Any other purpose?

A. Well, to haul the fishermen's gear around and move their furniture.

* * *

Q. (By Mr. Margolis): In asking that question about any other purpose, I was referring to this one truck. Do you use it for any other purpose in connection——

A. Yes, we use it for all other purposes: for fishermen [1643] to haul their gear, sometimes we have to haul salt in it, sometimes we haul barrels in it. It is just a general utility truck. It is used about three hours a day to deliver orders with, the rest of the time it just does whatever work we have for a truck to do.

Q. Sometimes you deliver fish to your wholesale

(Testimony of George F. Naylor.)

place in Newport Beach on that truck isn't that so?

A. To it?

Q. Yes.

A. During that period that you refer to, yes, I believe we did.

Mr. Schwartz: During what period?

The Witness: That period during the strike.

Q. By Mr. Margolis: You have used it at other times for that purpose, have you not?

A. Yes.

Q. There is no special reason for picking out, say, June of 1946, is there? A. Oh, no.

* * *

Q. (By Mr. Margolis): What was the number of employees that you employed at one time during the year 1946? And if there are any changes that occurred, you can tell us about that. [1645]

* * *

The Witness: Our requirements for our help are so varied that it is difficult for me to give you the number of employees that we employed during that period of time. I can tell you that our regular number of employees in the market are four.

Q. (By Mr. Margolis): Besides yourself?

A. And the rest of them are extra help we have.

Q. Up to August, 1946, during the rest of that year you had five? A. Yes.

Q. Do you have any other employees?

A. I had the employees in my market in Los Angeles—

(Testimony of George F. Naylor.)

Mr. Schwartz: If the court please, I object to this and [1647] ask it be stricken as not material to the issues in this case, what other employees there were outside of the Newport operation. Is is not material to the issues in this case.

Mr. Margolis: It is part of the same business.

Mr. Schwartz: I submit it is not part of the same business.

Mr. Margolis: This witness has testified it is part of his business.

The Court: In Los Angeles you conduct a fresh fish business?

The Witness: I did at that time.

The Court: Objection overruled.

The Witness: We had in Los Angeles, I think for the most part we had five employees in Los Angeles.

Q. (By Mr. Margolis): In 1946?

A. Yes.

Q. That was a pretty regular thing during the entire year, is that so? A. Yes.

Q. Did you in addition—all of your other employees connected with your fish business, the various phases of which you have described in your testimony, are temporary employees hired from time to time, is that correct?

Mr. Schwartz: I object to the question on the ground it is not clear what Mr. Margolis means by "all the other [1648] employees."

The Court: A moment ago I said it was material. If the number of employees he has is ma-

(Testimony of George F. Naylor.)

terial, then the number he has in Los Angeles is material. But I fail to see the materiality of all this. It might be material to test his recollection, but we are not trying the size of anyone's business.

Mr. Margolis: It seems to me where a subject is opened on direct examination—I read from 1515: “How many people are employed at your place of business?” is the question asked by Mr. Schwartz—that we have the right to go into the subject on cross examination.

The Court: I think you have gone into it.

Mr. Margolis: I haven't finished. There are other aspects of the business that I want to take up that I have not covered, your Honor.

The Court: The number of employees that he has in his business, that was asked on direct examination, even that is material only, it seems to me, by way of a preliminary matter to set the type or general conduct of his business.

Mr. Schwartz: That is correct.

Mr. Margolis: If it is material for that purpose——

The Court: You have the number now. He isn't employing eight or ten thousand people or several hundred.

Mr. Margolis: We want to get what the whole picture is. [1649]

The Court: You are entitled to get it as far as it is material; but it is material only in connection with the flow of the fish business, the fresh fish business, and the precise number of employees that

(Testimony of George F. Naylor.)

he has—it can't make any difference in this case whether he has five or four, whether they are employed temporarily or permanently.

Mr. Margolis: I don't want to argue the question——

The Court: If he had 500 instead of 5, then there would be some difference, or a hundred; but let's get on, counsel. I will sustain the objection.

Q. (By Mr. Margolis): What is the maximum number of persons that you had in your employ at any given time during 1946?

A. You mean at any one time?

Q. Yes.

Mr. Schwartz: Just a minute. I object on the ground it has been asked and answered.

The Court: It has been. Objection sustained.

Q. (By Mr. Margolis): You have not yet told us the total number, maximum total number of employees you had in your employ in all phases of the fish business during the year 1946, have you?

A. No, I don't believe I could, either, offhand.

Q. Can you give us your best estimate as to that?

A. All during the year of 1946? [1650]

Q. The maximum number that you had at any one given time in all phases of the business.

A. I would say—this is more or less hit or miss—I would say, perhaps——

Mr. Schwartz: If the court please, on that statement of the witness I will object to the question

(Testimony of George F. Naylor.)

on the ground it is asking for speculation on the part of the witness.

The Court: Overruled.

A. I would say that we had at one time perhaps 15 persons.

Q. (By Mr. Margolis): You say perhaps 15; do you mean that is your best estimate, is that right?

A. That is my best estimate, yes, sir.

Q. Of those 15, 5 would be at the Newport market, 5 at the Los Angeles market, and where would the other 5 be?

A. I will amend that. 20. 5 at Los Angeles and 15 at Newport Beach.

Q. Where would the 10 in Newport Beach be employed who were not working at the wholesale market?

A. Well, they would be working at the wholesale market.

Q. Ten additional employees at the wholesale market? A. That's right.

The Court: What is that? During the fish season?

The Witness: During the season, for instance, we got a lot of anchovies and sardines, some big orders we had to pack [1651] sardines and anchovies in barrels, and we had our regular business to conduct, and we had this other stuff to do, and it took a lot of help to do it.

Q. (By Mr. Margolis): Before I go on with that, do you know any of the defendants who are seated here in the court room?

(Testimony of George F. Naylor.)

A. I think I know them all. No, I won't say that. I know Lloyd Munson, and I know Mac over there, and Art.

Q. Mac, you mean Mr. McKittrick?

A. And I know Mr. Zafran. I have never met him, but I know of him.

Q. For the sake of the record, you are using first names——

A. McKittrick; Mr. Hill——

Q. You refer to Mr. Hill? A. Yes.

Q. And Mr. Zafran?

A. Mr. Zafran, and Charlie Mac——

Q. McLauchlan?

A. McLauchlan. And Lackyard.

Q. Lackyard? A. Yes.

Q. Have you had dealings as fishermen with any of these people?

A. I know them all except Mr. Zafran. I have dealt with Mac for a good many years. He has been down at Newport Beach [1652] as a representative of the union. I have known Lloyd Munson, I guess, for ten years, and Art Hill for seven or eight years; and Lackyard is the one I haven't known so long, perhaps three years, four years; and I have known McLauchlan ever since he came to Newport Beach.

* * *

The Witness: And I know Bob Phelps here.

Q. (By Mr. Margolis): You have had dealings with these defendants?

A. Heavens yes, years and years.